enterprise, non-monopolistic manner. The keener the competition the better. Furthermore compatibility, while desirable, certainly should not be the primary basis for a decision.

On Use of the UHF: I hope, too, that the Commission will approve at the same time standards for the immediate commercial utilization of a large number of channels in the ultra high frequency band so that a realistic nationwide competitive system of television may be developed. I regard it as tragic for the ultimate development of television that the VHF allocation heretofore made is handicapping the adoption of a truly equitable and scientifically practical VHF-UHF allocation. However, I trust that the Commission's final allocation in both bands will take into consideration the problems both of set owners and television licensees and not provide a hodge-podge for each city which may have to be revamped again in a few years. [fol. 1511] *On the Existing Freeze:* The public interest requires an allocation of TV channels which will insure a national competitive system. When the proposed 42 UHF channels are allocated on a city by city basis throughout the nation and standards for their use promulgated there will remain no reason for continuing the present freeze on VHF licensing and, of course, it should then be lifted. The sooner that is done the better. But until a decision is made by the Commission on utilization and allocation of the ultra high frequencies, it would be shortsighted to lift the freeze on VHF licensing. Easily identified selfish interests are laboring day and night to lift the freeze now and nothing more. To lift the freeze without a definite plan for the allocation and use of UHF channels would be both a scientific and economic absurdity.

I am handing a copy of this letter to each member of the Commission and releasing it to the press.

Very sincerely yours,

(S.) Ed. C. Johnson, Chairman.

ECJ/Cc

Honorable Wayne Coy, Chairman,
Federal Communications Commission,
New Post Office Building,
Washington, D. C.

[fol. 1512] For Release Upon Delivery

"The Propaganda Drive to Lift the 'Freeze'"

(Address by Senator Edwin C. Johnson, Chairman, Senate Committee on Interstate and Foreign Commerce, in the Senate of the United States, February 16, 1950.)

Mr. President. I desire to discuss some of the current problems in television which have been receiving considerable attention recently in the press. But first, I ask unanimous consent to insert at this point in my remarks an article which appeared in "The New York Times" of Sunday, February 12, 1950, by Jack Gould, radio editor of that newspaper.

"The Senator Replies"

"Edwin C. Johnson Explains His Position
On TV 'Freeze' and F.C.C.—A Rebuttal"

"By Jack Gould"

"Two weeks ago this department wrote about the Federal Communications Commission's 'freeze' on the authorization of new television stations. In reply, a letter has been received from Senator Edwin C. Johnson, Democrat, of Colorado, and chairman of the Senate Interstate Commerce Committee, which has supervisory authority over the commission's activities. Pertinent parts of the letter follow:

"'I read with a great deal of interest your column, 'Time For Action,' in *The Times* of Jan. 29. Consistently I have admired your forthright, sensible comments. I was, therefore, surprised to have you chide the Federal Communications Commission for being 'susceptible' to my 'beck and call' and that I 'persist in issuing communiques on what the commission should or should not do in highly technical matters.' I try to meet my responsibilities, which are specified by law, to follow as closely as possible all developments and viewpoints expressed on broadcasting matters.

"'Let us examine the principal points made in your column, a major portion of which I agree with

heartily. First, you say 'television is in real trouble.' You point out that the freeze is the source of the trouble and then you enumerate four 'chain of events' flowing from the freeze. I agree those are realistic deductions of the kind of trouble you are talking about and they are premised on sound facts. Then you ask the question, 'Why the freeze?' and proceed to answer it.

Half-Baked

"No informed person will disagree with some of your answers. Of course, there was interference in the 'low band'; of course, no final decision with respect to allocations in the 'high band' could be made until the interference question was solved. Actually, in my opinion, you were charitable in your reference to the interference problem. The Commission found itself in hot water because of its own injudicious half-baked allocation and the only way out was to clamp on the freeze; I had as much to do with inaugurating that freeze as you had, and I have about as much to do with keeping it on as you."

[fol. 1513] "You assert that the FCC has now no excuse for postponing the lifting of the freeze; that it has been agreed that a six megacycle width will be used for both color and black-and-white and that therefore the thing to do is to either open the high band, or find additional channels contiguous to the present low band. Perhaps you are right; perhaps the way is now open for the opening of the ultra highs, or at least, for a switch in the order of the current hearings so that testimony can be heard and agreement reached on the standards for the use of the high band. But here again, you are suggesting a technical engineering step which I do not feel competent to pass upon or give advice and upon which I have never advised.

"I suppose, and here I am only guessing, that the reason the FCC is reluctant to move first into the question of opening up the high band is that it wants to know as thoroughly as is now possible to know just how color will work on both bands, and whether and how the standards must be changed before open-

ing both bands to insure a permanent workable system of nationwide television.

Short-Sighted

"However, I have never said, and do not assert now, that the color question must be settled first; I emphasize again there are technical engineering questions involved here that probably neither you nor I know very much about. I have asserted, and will continue to assert, that to open up the freeze merely for the purpose of making more stations available only on the low band is a short-sighted negative policy which will play into the hands of certain interests and will do irreparable harm even to those licensees who have applications now pending for low band TV stations.

"If the FCC believes it has the engineering knowledge to permit it to open up simultaneously both the low and high bands for TV station assignments, by all means it ought to go ahead with that phase. I agree with you that color will not come overnight; that there will be a transition phase; that there will be a continued service for the vast number of black-and white set owners. In my opinion the commission is asserting its authority properly in the public interest by holding the current hearings and I concur heartily with you that it call in the representatives of the industry and figuratively knock their heads together on matters which are in the public interest.

"I cannot resist pointing out that in recent weeks a new propaganda campaign has gotten under way to have the FCC do one thing—and only one—lift the freeze at once, and to heck with a nation-wide competitive television allocation system. However, very fairly you point out the need for considering the allocations problem on a broad basis of all available channels.

"I hope I am not being petty when I point out that your arguments do not logically lead to the gratuitous paragraph which flails me for something not related to the subject-matter of your article. I do not deny that I watch the FCC's actions closely; the law directs me to do that. I do not deny that I have written the FCC on several occasions with respect to

broad policy matters affecting the public interest over which I have statutory responsibility. But, in fairness, I would not want my lack of comment now to suggest that I am even remotely responsible for the freeze or the engineering facts which have brought it on and which are keeping it on. I am not omnipotent; I cannot alter scientific facts."

Ed C. Johnson, Chairman, Senate Committee on Interstate and Foreign Commerce, Washington, D. C."

"The article to which Senator Johnson refers made it clear that institution of the 'freeze' was due to interference factors. Continuance of the 'freeze' however, has been due not only to interference factors but also to the inordinately complex task of determining the technical merits of the CBS and RCA color systems, a task in which Senator Johnson has played a much more active and specific role than his letter suggests."

[fol. 1514] "In August, 1949, for example, Senator Johnson wrote the Commission that a CBS demonstration proved color video was 'here now' and that there was no reason for further delay in getting it started. In October, 1949, he was quoted as saying 'RCA's system has a potential of acceptance comparable to none.' In November, 1949, he wrote the commission that compatibility of a color system with today's black-and-white method, which is the heart of the RCA plan, 'certainly should not be the primary basis for decision.'

"The whole point of the original reference to Senator Johnson was that such evaluation of the technical and engineering merits of competitive color systems is a logical function of the FCC, which was specifically established by Congress to deal with scientific matters on which it was not practical for Senators and Representatives to legislate. Impromptu opinions on the merits of transmitting systems is not the same as exercising broad supervision over the FCC's affairs, which admittedly is the statutory responsibility of Senator Johnson's committee.

FCC Role

"In the last analysis it is the FCC which must make up its own mind. But the commission can hardly do its job in a healthy climate if it is subjected to constant advice from a group which for all practical purposes has the power of life or death over its existence. Senator Johnson's committee passes on all appointments—and reappointments—to the commission, can conduct inquiries into its affairs, and can be a decisive influence in the amount of its appropriations.

"If Senator Johnson believes that there are certain aspects of broadcasting which should be decided by Congress and not by the FCC, the remedy lies in a revised radio law rather than in the indirect expression of Congressional wishes through statements.

"Senator Johnson, in one letter to the FCC, noted that it was typical of 'totalitarian' reasoning to argue that color TV must be absolutely 'perfect' before it can be introduced. By the same token it is unrealistic that millions of persons be denied excellent black-and-white television for an indefinite period merely because some day there will be color.

"By reason of his commendably sincere interest in broadcasting and the importance of his office, the Senator can make a notable contribution to television by providing statesmanlike leadership in resolving the present impasse which is delaying all kinds of video—both black-and-white and color. His letter, particularly in its open-mindedness on the possibility of a revised approach to the problems of the 'freeze' is a heartening step in that direction."

This article includes extracts from a letter which I wrote to Mr. Gould last week with respect to a previous article by him in *The New York Times* of January 29, in which he urged the lifting of the existing freeze on the allocation of additional television stations. But Mr. Gould conveniently omitted certain pertinent language contained in my letter to him.

For instance, I said:

"Let us examine the principal points made in your column, a major portion of which I agree with heartily.

First, you say 'television is in real trouble.' The greatest trouble seems to be to keep the supply of sets up to the demand; 2,500,000 sets were sold last year. Recent stock market quotations of television manufacturing companies do not reflect very serious trouble. But for the sake of argument let's agree that television is in trouble."

You won't find that language in the Gould article. By omitting it, Mr. Gould avoids an important point which he does not want to face.

[fol. 1515] Again he runs away from realities when in discussing the causes of the freeze he omits this sentence from my letter:

"The truth is that the series of allocations in the VHF band were incorrect, ludicrously incorrect, and no one in the Commission will deny it."

Next he omits these two extremely pertinent paragraphs which presumably do not pour any water on his propaganda wheel:

"You continue that once the question of the high band was raised, the color controversy was dumped into the FCC's lap. You explain, fairly and honestly I may add, that in this color dispute the FCC would like to see the public saved the expense of investing in black-and-white if color can be made a reality in a reasonably short time. That has been my position throughout; about a year ago now when certain engineering studies came into my hands, I became convinced that if the FCC continued to shelve the color question, there was an excellent chance that three things would happen: (a) color would come only when certain powerful patent holding corporations were good and ready for it to come; (b) the chain of circumstances would put the FCC into a position where eventually it could okay only one system of color (because of prior engineering standards which would have been adopted for use of both low and high bands); and (c) television would fall largely, if not wholly, into monopoly control. I have been pleading for color to be given the opportunity to develop in the good old American free enterprise way.

"The FCC, or at least certain members of it, quickly realized the position they were in and, with but a single dissent, last May decided to hold hearings on the two closely related vexatious questions. It was the FCC which decided the order of the hearings; i.e., that the color question be first explored. Again, I had no more to do with that agenda than you; I was concerned only that color not be shunted aside into the indefinite future and that the Commission fulfill its legal duty under the law of pushing every advance and development in the broadcasting art. That there may have been sound engineering reasons for the FCC to first explore color before determining the allocations in the low and high bands is undoubtedly true, but that is a technical engineering question on which I have not commented or given 'advice'."

Gould maintains that the FCC has now no excuse for postponing lifting of the freeze, but when I gave him this reason he didn't publish it:

"It is implicit, of course, from your own argument on this point that you agree that more channels must be available before a final and complete television allocation is made. You obviously agree that to merely open the freeze for the purpose of assignment of additional stations in the low band will defeat the building of a nationwide competitive system of television, regardless of whether that system eventually is a black-and-white or color system."

It is especially revealing when Mr. Gould omitted this sentence from my letter.

"Sure, the FCC 'needs . . . some real gumption and backbone to assert its proper authority' and that gumption should be used, as it is now used, to not let certain publications in the interest of their advertisers call the tune."

He didn't like that and I know why. He wants the Commission to have gumption only to do what he proposes. What a nice cozy little arrangement that would be.

[fol. 1516] Mr. Gould, I presume, does not like anyone to infer that his column is being prostituted by private

interests. That is the only way I can explain his deletion of this language from my letter to him:

> "A leading engineer for the principal patent holder in radio in the course of a letter informed me casually that recent tests indicated that the interference problem for both low and high bands were the same and therefore no useful purpose is served by maintaining the freeze on the low band; the legal counsel for a group of radio manufacturers spent several hours telling us much the same thing; a number of stories have appeared in the trade press recently along the same line; another group of leading lights in the radio industry have requested a conference with me shortly, on the same point; and now your column makes a similar suggestion."

So much for Mr. Gould and his fidelity in serving a pressure group which is determined to dominate the Federal Communications Commission.

Mr. President. I desire to comment briefly about the existing situation in television. It is time that there be some plain talk about this matter. The original television allocation made by the Federal Communications Commission in 1947 provided for 405 stations to be located in 140 communities in the United States. That allocation was made in the "lower band" of frequencies, the area in which the principal experimental work had been carried on. By May of 1948 the Commission had received so many protests from communities which would have been denied television station facilities under the original allocation that it proposed a new revised allocation under which more than 900 stations would be allocated to 461 communities. This was a little closer to providing for a nationwide competitive service. Meanwhile, in the larger cities on the eastern seaboard, permits had been obtained and construction work started on television stations. It wasn't long after the first few television stations went on the air that both the industry and the Commission realized that something was terribly wrong; there was so much interference that reception was wholly unacceptable. It didn't take a genuis to realize that under such circumstances there just wouldn't be a sound television industry capable of expansion.

The original allocation put too many stations on the same

channel too close together. That allocation was premised on use of the same channel by cities separated by something over 100 miles; they placed Cleveland and Detroit on the same channel. In making that allocation the Commission was guided by the engineering brains of the radio manufacturers, principally based on the experimental work of one of them. That experimental work was done in the lower bands, where only a limited number of channels were available. However, the Commission long before had set aside as the permanent home of television a portion of the spectrum known as the ultra high band, where there is ample room for a nationwide television service *without* interference. But those who wanted to push television insisted that the high band should wait; they urged that they be given the green light to go ahead with the lower band. The Commission fell for this engineering argument and it made the allocation which proved so tragically wrong.

By September 1948, the Commission knew it was in serious trouble, so it clamped on the freeze; in other words, it announced it would make no more allocations and permit no further station construction while it ferreted out a solution to the interference problem. By clamping on a freeze, the Commission acknowledged that its original allocation and its proposed revised allocation were ludicrously wrong, based on unsound and unproved engineering data. The freeze had been in effect since September 30, 1948, and no new stations have been authorized since that time. When it went into effect some 40 television stations were on the air and about 60 more had been authorized. Today, there are 99 stations operating in 55 communities and more than 4 million sets are in use.

When the Commission ordered the freeze, it announced that it would hold hearings on the entire subject. Those in the industry who had sold it a bad bill of goods were frantically scurrying around trying new devices and plans and theories to overcome the interference. They were anxious to keep television in the lower band where the original allocation had been made, and opposed the use of the higher band where ample room was available.

[fol. 1517] From September 1948 to the early spring of 1949 the Commission studied, the industry studied, and nobody came up with anything that would satisfy the Commission, which by this time had become exceedingly cautious about moving forward again until it was sure of its

ground. Meanwhile, the Commission also had become acutely conscious of the development of color television and its enthusiastic acceptance by the people. It had held hearings two years before on the use of color and had turned down a demonstrated system on the ground that it was not ready for commercial use. But it realized that some day color television would have to be accommodated and to make a decision on the interference problem without taking into account the use of color would be unwise technically and unsound economically. Should that be done the Commission would find itself in another dilemma shortly with another freeze unavoidable. So in May of last year it decided to hold extensive hearings on the interference problem, the use of both the lower and higher bands, and the standardization of color television. Those hearings began last September and have continued intermittently since. They resume again late this month and no one can say just when they will be concluded.

The Commission's agenda for the hearings specified that it would examine into the development of color television systems first; thereafter study the use of the lower and higher bands. While I am not responsible for the order of the hearings, common sense dictates that the Commission wanted to have all the facts available about color television first, so that when it came to a decision about use of lower and higher bands, it would know just how color should be accommodated. In short, it wanted to avoid its mistake of two years before when it had accepted a half-baked engineering thesis that stations could be on the same channel a hundred miles apart. To avoid areas of television distortion it now plans for a separation of more than two hundred miles.

Lately, certain elements in the television industry are getting ants in their pants. The freeze, they cry, let's get rid of the freeze! Let television go ahead! Forget a nationwide competitive system; forget color; forget using the higher bands! These things can come later; right now let's get television stations operating in another 30 or 40 cities! The Commission, they shout, is stifling progress! The Commission is slow, hesitant, and lackadaisical; it ought to be investigated!

I have never hesitated to criticize the Commission when I thought they were wrong; by the same token I am not

going to remain silent and let them become the butt of unwarranted and unprovoked assault by people who are trying to grind their own ax and without regard to the public interest and the general welfare.

The Commission was terribly wrong technically when it made its original television allocation. No one can deny that now, although there were voices in the wilderness four years ago who warned of the error. But having made a mistake, there is no reason for the Commission to compound the error now by again listening to the same siren voices who were so wrong before and who led them astray.

Nevertheless, to high pressure the Commission and others to their way of thinking, the radio manufacturers now have hired a high-powered public relations firm to grease the skids. The propaganda started rolling. Two months ago I received a letter from Dr. C. B. Jolliffe, RCA's chief engineer and head of their laboratories, in which in the course of other remarks he casually informed me that Dr. Engstrom, their television expert, had recently completed studies which proved that interference problems for color and black-and-white television were the same and that since interference was no longer a problem in the lower bands, there was no point in maintaining the freeze.

Counsel for certain radio manufacturers recently spent two hours talking to me about television problems and conveying the idea that the freeze was unnecessary and improper and that the color television question could be solved in its own good time. The trade press faithfully rallied to the attack with a series of stories, including two highly technical articles which were published in engineering journals. The trained seals took up the chorus with wise cracks. This was designed to furnish headlines for newspapers which devote attention to radio and television matters. Then alert radio writers got the cue and quoted copiously from such authorities as Dr. Allan DuMont and Mr. David Smith of Philco.

[fol. 1518] Last week Dr. DuMont discussed the freeze situation with New Jersey legislators, who, the trade press reports, were impressed by his statements and promised to explore the situation.

Dr. DuMont, so far as I know, is one of the more reputable authorities in the field of radio and television. He has wide technical knowledge and is a successful manufacturer. He operates a television network which competes

with three other and somewhat better entrenched network companies who have been in radio for many years. Understandably and very properly, Dr. DuMont is anxious to expand his television network. So long as the number of cities having television is limited, his network cannot expand. He has been cool, therefore, to color television development and he has been impatient with delays, however unavoidable, since his primary aim is to expand his existing black-and-white network as rapidly as possible.

So Dr. DuMont hurls machine-gun-like innuendo-s and distortions such as these: hundreds of thousands of jobs are being denied workers by the existing freeze; the limits of the industry's expansion are drying up; the industry is becoming stagnant; soon unemployment will be rife in the industry. Mr. Smith of Philco blows the same kind of bubbles and because these men are respected in the industry, their words are widely quoted.

Such statements are mischievous rantings and not based on facts. This talk about unemployment in the industry is not new to me, nor efforts to enlist labor in the campaign to lift the freeze. Some weeks ago I received a letter from Mr. Joseph D. Keenan, director of Labor's League for Political Education, who informed me he had received reports from the electrical workers union that they feared the freeze would result in unemployment for their membership. I answered Mr. Keenan and I would like now to quote from that reply.

> "I recall your conversation with me regarding the reports you have been receiving from local unions of the International Brotherhood of Electrical Workers, arguing that the controversy about color and black and white television, and the present freeze on VHF licensing is causing unemployment.
>
> "Frankly, I just cannot understand the present basis of such reports. In the first place, the controversy between black and white and color television has nothing to do with the freeze on licensing of additional television stations; the freeze was clamped on because of interference between stations, and the Federal Communications Commission is studying, as part of its current overall television hearing, the use of ultra high frequencies and separation of stations on the very high frequencies. I had hoped that the hearing would

be completed before now, but the subject is involved and complicated and it is vitally important, both to prevent monopoly and in the general public interest, that the decision be a sound one for the long pull so that we will have in this country a genuine nationwide, competitive television service. And, of course, the matter is entirely an administrative one and not a legislative one and the Federal Communications Commission would be in a far better position to comment on the time element than would I.

"However, I must call to your attention that television receiver set sales for the year just past will reach the amazing total of 2,500,000; that the month of November broke all previous records for television set sales; that in some areas television sets are actually being black-marketed; i.e., they are in such short supply that premiums are paid to get sets; that no manufacturer in the business can keep up with demands from retailers. Under those circumstances, I fail to understand how there can be any talk of unemployment among electrical workers, insofar as production of television sets is concerned. A similar picture obtains for the sale of radio sets. Certainly, the electrical workers cannot be referring to the amount of employment that would be afforded by the construction of additional television broadcasting stations, once the freeze is lifted. There is very little electrical work in that, except for the building of transmitters, and even that work is insignificant as compared with the employment afforded by volume production of receiver sets.

[fol. 1519] "I am inclined to believe that the reports you are receiving are hangovers from a propaganda campaign initiated many months ago by the Radio Manufacturers Association, which had felt that the advent of color would adversely affect the sale of black and white receiver sets, and therefore they set in motion every wheel they could to becloud the issue. Their interest was—and is—selfish; they desire to exploit the black and white receiver market and hold off color until a rich melon has been garnered, then make the switch and force the public to discard the old sets and buy new ones. Eventually, 30,000,000 Ameri-

can families would have invested $6 billion in black and white sets which would bring tremendous pressure against opening up color television, thus serving the interests of the dominating patent holding corporation in black and white television. The fears of the radio manufacturers lobby that the color question would hurt receiver set sales have proved groundless but they have just forgotten to turn off the propaganda mill; now the facts make them look silly."

The truth of this situation is there is no unemployment in the television industry; it is riding at an all-time peak. As I wrote Mr. Gould, but which he did not quote, the only trouble the television industry has today is keeping up with the demand for sets. Even the manufacturers predict a 4,000,000 set sale this year in the existing 55 market areas now operating. Certainly, recent stock market quotations of television manufacturing companies do not indicate that the companies are suffering. Television stocks have been the market leaders for weeks; one company's stock went up nearly ten points in one week. Certainly, that doesn't reflect any trouble, or any recession in their business either, even though in the last six months set prices have been reduced a third.

Of course, what some of these manufacturers want is a freeze of their own, but their freeze would be entirely different. They want television to go down a blind alley based on the present wholly insufficient twelve channels which will not permit the building of a nationwide competitive television service. They becloud the issue by talking only about wanting to furnish the "dear people" with television programs but no one hears who is to furnish the service; to what extent monopoly control will flourish; and most important of all, which cities will get service and which won't.

Senators from the southeast and the southwest, and the great Mississippi Valley area, and the Rocky Mountain area, have a right to be concerned about the future of television. If the siren voices who rant and rave today about lifting the freeze have their way, thousands of communities will either never have television or at best will receive it through little slave stations operating as satellites of some big monopoly controlled station in a far distant metropolis. If that is the kind of television we visualize for this country,

all we need do is support the "lift the freeze now" crowd in their selfish aspirations.

[fol. 1520] If these short sighted propagandists have their way the indications are clear as to what will not be done. They show little interest in the high band where 60 or more channels are available. In their book, television is merely a class service which can be made to pay big dividends. Why worry about the smaller towns when the larger cities have a greater profit potential. They figure they can service all the large profitable cities with possibly another half dozen channels and the place to get those channels is right in the lower band where the present television channels are located. I should like to do that also but these channels are now assigned to various important Government services, including aircraft communications. Furthermore, FM radio is located there; also various safety services use frequencies in that area. But these manufacturers believe that a drive can be put on to shove these services out of their present position and assign the additional channels to television and everything will be fine—for them. I differ with them in that I want a permanent plan for the long pull based on a sound engineering decision and I want it now.

Only last week I read with a great deal of interest a letter from an eminent radio consulting engineer written to Mr. Max Balcom, president of the Radio Manufacturers Association, dealing with the propaganda wave to lift the freeze.

Says this engineer:

> "We fail to see what information and technical progress have been disclosed which have eliminated the need for the current 'freeze'. RMA has done absolutely nothing except shout compatibility and lift the freeze in order to promote the sale of current black and white sets on a nationwide basis. RMA has not lifted a finger to cure oscillator radiation and image interference both of which can seriously affect the sale of television sets as more sets are sold. Instead, RMA has established a standard of minimum radiation which is patently absurd as FCC well knows.
>
> "There is no evidence that any RMC Committee has studied television as a *system* or that RMA has any idea of the requirements of a truly nationwide system.

In fact, the booklet says the new NTSC Committee is now ready to help if FCC will tell it what to do.

If the RMA Television Committee members believe that the freeze should be lifted, what is the purpose of item 1 in the RMA Recommendations? Why not come out and recommend the adoption of the RCA system with its speed flickering 15 picture per second rate and complex receivers, or the CTI system which will chain future receiver manufacture to projection techniques and and expensve optical system.

"If compatibility is the one and only thing of importance, obviously we do not need the "establishment of sound standards" as stated in Item 1. We already have these 'sound standards' in the form of the present monochrome standards now in use.

"If the RMA Television Committee will abandon its present policy of blind obeisance to compatibility which prevents the free expression of engineering thought and work on this complex problem, we feel confident that the many qualified engineering employees of RMA member companies can do a fine job by developing all of the pertinent facts. The Commiftee can then form a policy based on those facts to replace the present policy which was formulated before many of the facts disclosed during the past six months were available for widespread study by the engineers of the industry."

Mr. President. The campaign to lift the freeze is an artificial fog, spread by expert, high-powered propaganda artists aided and abetted by a public relations agency. Relying on a lack of background and knowledge among those it seeks to convince, it will continue to pressure congressmen and senators. Relying on threats and intimidation, it will continue to pressure the Commission. One plan is to have a congressional investigation of television, as if a congressional committee could deal with technical [fols. 1521-2307] problems of "dot sequential systems", "proper band widths", and a score of other involved technical factors. If there is to be an investigation of television by Congress, let's have one which goes into monopoly controls and patent holding devices and restrictions. Nearly a year ago technical data came into our committee's hands

which will provide an excellent basis for investigating television patent monopolies. Our committee may decide that the time has come to thoroughly explore what is going on, but when it does so, it will be an investigation to determine who is calling the shots, and why. Meanwhile, I know the Commission will proceed with their hearings without becoming ruffled or stampeded by high pressure tactics.

[fol. 2308] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action No. 50-C-1459

RADIO CORPORATION OF AMERICA, NATIONAL BROADCASTING COMPANY, INC., and RCA VICTOR DISTRIBUTING CORPORATION, *Plaintiffs*,

vs.

UNITED STATES OF AMERICA and FEDERAL COMMUNICATIONS COMMISSION, *Defendants*

Before MAJOR, *Circuit Judge*, SULLIVAN and LA BUY, *District Judges*.

OPINION—Filed December 22, 1950

MAJOR, *Circuit Judge*. This action was brought to enjoin and set aside an order of the Federal Communications Commission, adopted October 10, 1950, effective November 20, 1950, which promulgated standards for the transmission of color television. Plaintiff Radio Corporation of America (RCA) is engaged, among other things, in research and development work in the field of electronics, and particularly in the field of radio and television, as well as in the manufacture and sale of radio and television transmitting and receiving apparatus and parts. Plaintiff National Broadcasting Company (NBC) is engaged in sound and television broadcasting, including network broadcasting. Plaintiff Victor Distributing Corporation is engaged in the sale of articles and products manufactured by the Victor Division of RCA. Both this distributing company and

NBC are wholly owned subsidiaries of RCA. The defendants are the United States and the Federal Communications Commission.

The complaint sought an interlocutory injunction until the further order of the court and a permanent injunction [fol. 2309] upon final hearing. The defendants moved for a summary judgment and a dismissal of the complaint on the ground that there was no genuine issue as to any material fact and that defendants were entitled to a judgment as a matter of law.

A three-judge court was convened, as required by Title 28 U.S.C.A. Secs. 2284 and 2325. On the issues thus presented, the matter came on for hearing and oral argument was heard on November 14, 15 and 16, 1950.

Prior to the time of oral argument, the Columbia Broadcasting System (CBS), also engaged in sound and television broadcasting, by agreement of the parties, was allowed to intervene in support of the Commission's order. Either during or previous to the oral argument, the following parties, over the objection of defendants, were permitted to intervene in support of plaintiffs' attack upon the Commission's order: Local No. 1031 of the International Brotherhood of Electrical Workers, representing 21,000 members, 18,000 of whom are employed in Chicago or vicinity in the manufacture of radio and television sets or in the manufacture of parts and in the assembling thereof; Pilot Radio Corporation; Emerson Radio and Phonograph Corporation; Wells-Gardner & Company, Sightmaster Corporation and Radio Craftsmen, Inc., all manufacturers of television receiving equipment; and Television Installation Service Association, a trade organization engaged in the business of servicing and installing radios and television equipment in the Chicago area.

The statutes involved with respect to the jurisdiction of this court are Title 28 U.S.C.A. Secs. 1336, 1398, 2284, 2321-25 and Sec. 402 (a) of the Communications Act of 1934, as amended, Title 47 U.S.C.A. Sec. 402 (a). With respect to the legal authority of the Commission to adopt standards, the provisions of the Communications Act mainly involved are Secs. 4 (i), 301, 303 (b), (c), (e), (f), (g) and (r). Secs. 4 (i) and 303 (r) of the Communications Act endow the Commission with authority to make rules and regulations and issue such orders as may be necessary in

the execution of its functions and to carry out the provisions of the Act. Sec. 303 (b) authorizes the Commission, as the public convenience, interest or necessity requires, to prescribe the manner of the service to be rendered by stations, and Sec. 303 (e) gives similar authority to regulate the kind of apparatus to be used with respect to its external effects. Sec. 303 (g) provides, under the same standard of the public convenience, interest or necessity, [fol. 2310] that the Commission shall "study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest."

As has been shown, there was before the court at the time of the hearing plaintiffs' prayer for an interocutory injunction and defendants' motions for a summary judgment and for dismissal of the complaint. Numerous affidavits were presented by the plaintiffs as well as by the plaintiff-intervenors, showing that irreparable damages would result if the order was permitted to take effect. Opposing affidavits were filed by the defendants and by CBS, the defendant-intervenor. There was also presented by the Commission a record of the proceedings, upon which its order was predicated.

At the conclusion of the hearing, the court took the conflicting motions under advisement and at the same time entered a temporary restraining order "restraining and suspending until further order of this court the promulgation, operation and execution of the order of the Federal Communications Commission adopted October 10, 1950, effective November 20, 1950." As a basis for this order the court entered findings of fact, including the finding, among others, that irreparable damages would result to plaintiffs and intervenors unless the Commission's order was restrained and suspended during the consideration and determination of the issues before the court, and that such temporary suspension would be in the public interest.

The order sought to be set aside has been the subject of attack on many fronts, which may be generally classified under two contentions, (1) that the order is contrary to the public interest, and (2) that its adoption represents an arbitrary and capricious attitude on the part of the Commission. Under these two general categories there are, of course, many subsidiary issues. The defendants

concede that RCA has an interest which permits the maintenance of the instant suit, but that there is an absence of such interest on the part of the other plaintiffs, as well as on the part of the intervening plaintiffs. For the purpose of this decision, we shall assume that all the plaintiffs, as well as the intervenors, are properly before the court.

After listening to many hours of oral argument by able counsel representing the respective parties, we formed some rather definite impressions relative to the merits of the order, as well as the proceedings before the Com- [fol. 2311] mission upon which it rests. And our reading and study of the numerous and voluminous briefs with which we have been favored have not altered or removed those impressions. Also, in studying the case, we have been unable to free our minds of the question as to why we should devote the time and energy which the importance of the case merits, realizing as we must that the c ntroversy can only be finally terminated by a decision of the Supreme Court. This is so because any decision we make is appealable to that court as a matter of right and we were informed during oral argument, in no uncertain terms, that which otherwise might be expected, that is, that the aggrieved party or parties will immediately appeal. In other words, this is little more than a practice session where the parties prepare and test their ammunition for the big battle ahead. Moreover, we must give recognition to our limited scope in reviewing an order of an administrative agency. While citation of authority in this respect is hardly necessary, it may not be amiss to make reference to a few recent Supreme Court opinions.

In *American Telephone & Telegraph Co. et al.* v. *United States et al.*, 299 U. S. 232, 236, wherein the court had under review an order of the instant defendant Commission, the court stated: "This court is not at liberty to substitute its own discretion for that of administrative officers who have kept within the bounds of their administrative powers. * * * it is not enough that the prescribed system of accounts shall appear to be unwise or burdensome or inferior to another. Error or unwisdom is not equivalent to abuse."

In *Federal Security Administrator* v. *Quaker Oats Co.*, 318 U. S. 218, 227, the Court of Appeals for this Circuit set aside the order of an administrative agency. The Supreme Court reversed and with reference to review

provisions of administrative action, stated: "Under such provisions we have repeatedly emphasized the scope that must be allowed to the discretion and informed judgment of an expert administrative body. [Citing cases.] These considerations are especially appropriate where the review is of regulations of general application adopted by an administrative agency under its rule-making power in carrying out the policy of a statute with whose enforcement it is charged." And further the court, referring to the judgment of the administrative agency, stated (page 228): "That judgment, if based on substantial evidence of record, and if within statutory and constitutional limitations, [fol. 2312] is controlling even though the reviewing court might on the same record have arrived at a different conclusion."

More recently, in *National Broadcasting Co., Inc. et al.* v. *United States et al.*, 319 U. S. 190, 224, the court reviewed and sustained an order of the instant Commission, and in doing so stated: "The Regulations are assailed as 'arbitrary and capricious.' If this contention means that the Regulations are unwise, that they are not likely to succeed in accomplishing what the Commission intended, we can say only that the appellants have selected the wrong forum for such a plea. * * * Our duty is at an end when we find that the action of the Commission was based upon findings supported by evidence, and was made pursuant to authority granted by Congress. It is not for us to say that the 'public interest' will be furthered or retarded by the Chain Broadcasting Regulations. The responsibility belongs to the Congress for the grant of valid legislative authority and to the Commission for its exercise."

Thus, with our scope of review so firmly delineated, we turn to a brief statement, if that is possible, of the proceedings which culminated in the order under attack. The Commission for many years had considered the question of color television. CBS had formerly proposed a system, which was denied in 1947. The instant proceedings, or that part which related to color television, were initiated by the Commission's notice of July 11, 1949 of further proposed rule-making relative to color television. This notice proposed among other things to consider color television systems, provided that such systems met two criteria: first, that they operate in a six-megacycle channel (the frequency space allotted to black and white television

broadcasting stations); and second, that the pictures be received on existing television receivers "simply by making relatively minor modifications in such existing receivers," and the notice provided, "following the closing of the record and the conclusion of oral arguments, the Commission upon consideration of all proposals, counter-proposals, and evidence in this proceeding will adopt such rules, regulations and standards as will best serve the public interest, convenience or necessity." In response to this notice, comments relating in whole or in part to color television were filed by numerous parties. CBS, RCA and CTI (Color Television, Inc.) were the only parties who appeared as proponents of their own color television systems.

[fol. 2313] The hearing, participated in by all members of the Commission, commenced September 26, 1949 and ended May 26, 1950. In all, fifty-three different witnesses were heard and 265 exhibits received. The transcript of the hearing covers 9717 pages. During the period from November 22, 1949 to February 6, 1950, extensive field tests were made of the three systems proposed. Progress reports concerning these tests were filed with the Commission by the three proponents during December 1949 and January 1950. Comparative demonstrations of the three proposed systems were made on different dates until May 17, 1950. In response to the Commission's notice, proposed findings and conclusions were filed by proponents of the three systems.

On September 1, 1950, the Commission issued its first report, in which it made detailed findings and conclusions concerning the three proposed color television systems and set forth minimum criteria which such a system would have to meet in order to be considered eligible for adoption. CTI is not a party to this proceeding and there is no occasion to refer to the findings as to its proposed system. We set forth in a footnote the basic findings as to the system proposed by RCA and that proposed by CBS.[1]

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[1] As to RCA:

"(1) that the color fidelity of the RCA picture is not satisfactory and that there appears to be no reasonable prospect that the defects can be overcome;

(2) that the texture of the RCA color picture is not

[fol. 2314] Notwithstanding the findings favorable to the CBS system, the Commission declined in its first report to adopt that system. Instead of and concurrently with its first report, the Commission issued a second notice of further proposed rule-making, suggesting the adoption of bracket standards in the existing monochrome television system and invited interested parties and all manufacturers to submit comments on the proposal. This proposal embodied a method by which brackets would be incorporated in the receivers thereafter manufactured so as to permit such receivers to receive black and white pictures from present transmissions as well as color transmission by CBS. The stated purpose of this proposal was to pre-

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satisfactory and that it is difficult to see how this defect can be eliminated;

(3) that the receiving equipment utilized by the RCA system is exceedingly complex and that there is no assurance, even if the tri-color tube is successfully developed, that the RCA receivers will not continue to be unduly complex and difficult to operate;

(4) that the equipment which RCA utilizes at the transmitting station is exceedingly complex and there is no assurance that satisfactory commercial type station equipment can be built;

(5) that the RCA system is much more susceptible to certain kinds of interference than standard black-and-white or the CBS color system;

(6) that there is not adequate assurance of RCA's ability to network color of proper quality over existing facilities; and

(7) that the RCA system has not been sufficiently field tested."

As to CBS:

"(1) that CBS produces a color picture that is 'most satisfactory from the point of view of texture, color fidelity and contrast';

(2) that the CBS receivers and station equipment 'are simple to handle' and within the economic reach of the public;

(3) that though the CBS system is susceptible to flicker to a greater degree than standard black-and-white, the problem is not serious since flicker, which

serve the status quo on compatibility.[2] Maintaining the status quo on compatibility required the construction of receivers capable of receiving field sequential color transmissions in black and white. Comments upon the proposed bracket standards were received from thirty-three interested parties and television receiver manufacturers which disclosed an almost unanimous opinion on the part of manufacturers and other interested parties that such a system was not capable of being produced within the time limits fixed by the Commission.

On October 4, 1950, RCA filed a petition requesting the Commission to view the improvements made in the performance of the RCA color system between December 5, 1950 and January 5, 1951, and that the Commission view further experimental broadcasts of the three proposed color systems during the period to June 20, 1951, before reaching a final determination with respect to color standards. This request by RCA was denied, and on October 10, 1950, the Commission issued its second report, which concluded that the field sequential color system should be adopted. No testimony, oral or written, was received by

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results from brightness, does not appear at the brightness level which is adequate for home use;

(4) that while the CBS system has less 'geometric resolution' than black-and-white, the addition of color more than outweighs this loss, and that the black-and-white pictures produced from CBS color are acceptable; and

(5) that while as a practical matter the apparatus now used by the CBS system is limited either to projection receivers of unlimited size or direct-view pictures of 12½ inch size, this size limitation will be eliminated if and when a commercial tri-color tube is successfully developed, and that in any event the public might well prefer a 12½ inch color picture to a 16 inch black-and-white picture and should not be deprived of that choice."

[2] The term "compatibility" describes a situation in which no change whatever is required in existing receivers in order to enable them to receive as black and white picture a picture transmitted in color.

[fol. 2315] the Commission in the interim between the issuance of its first and second report.

In its second report (issued October 10, 1950) the Commission, with reference to its first report, stated: "The Report stated that in the Commission's opinion, the CBS system produces a color picture that is most satisfactory from the point of view of texture, color fidelity and contrast. The Commission stated that receivers and station equipment are simple to operate and that receivers when produced on a mass marketing basis should be within the economic reach of the great mass of purchasing public. The Commission further found that even with present equipment the CBS system can produce color pictures of sufficient brightness without objectionable flicker to be adequate for home use and that the evidence concerning long persistence phosphors shows that there is a specific method available for still further increasing brightness with no objectionable flicker. Finally, the Commission pointed out that while the CBS system has less geometric resolution than the present monochrome system the addition of color to the picture more than out weighs the loss in geometric resolution so far as apparent definition is concerned."

Simultaneously with the second report the Commission entered the order under attack, amending the Commission's Standards of Good Engineering Practice, to provide for standards of color television transmission in accordance with the field sequential system (CBS system) effective November 20, 1950. Commissioners Sterling and Hennock dissented from the Commission's second report. On the date of the issuance of its second report, the Commission also denied the petition of RCA to postpone a final determination of the color proceedings and to have further demonstrations of the three proposed color systems.

While the findings of the Commission are severely criticized, it is not contended in the main that they are not supported by substantial evidence. It is pertinently pointed out, however, that a number of critical findings are based upon evidence which was taken in the earlier stage of the proceeding which is not representative of the situation as it existed at the time the findings were adopted. Admittedly, much progress was made during the latter portion of the hearings and, as claimed, after the hearings closed, in the development of a compatible system of color

television. Particularly was such progress made by RCA, and as we view the situation the most plausible contention made by plaintiffs is that the Commission abused its dis- [fol. 2316] cretion in refusing to extend the effective date of its order so that it might further consider the situation, and particularly the improvement which it is claimed had been made by RCA and others.

On the merits of the case, however, with which we are directly confronted by reason of defendants' motion for a summary judgment, much of plaintiffs' argument—in fact, the major portion of it—is predicated upon matters outside the record made before the Commission, and without going into too much detail we think it relevant to refer to some of such matters. While many affidavits offered by the plaintiffs as well as the intervening plaintiffs are proper, no doubt, to show damage in support of their asserted right to an injunction, many of them go far beyond this purpose and contain a recitation of alleged facts directly in conflict with the findings made by the Commission. Typical of such affidavits is that of Dr. C. B. Jolliffe, Executive Vice President in charge of the RCA Laboratories. His affidavit, in addition to showing damages which will be sustained by RCA as a result of the order, goes extensively into the alleged merits of the RCA system, the alleged demerits of the CBS system and the alleged errors committed by the Commission in reaching its decision. And much of plaintiffs' argument is predicated upon matters brought before the court in this fashion. In our view, such asserted facts are not properly before the court. A consideration of such matters would in effect amount to a trial de novo, which we are without power to grant. Thus, much of plaintiffs' argument, predicated upon such immaterial matter, appealing as it is, must be discarded.

Another segment of evidence upon which much reliance is placed is the report made by the so-called Condon Committee. Dr. Edward U. Condon, Director of the National Bureau of Standards of the United States Department of Commerce was, under date of May 20, 1949, requested by the Chairman of the Senate Committee on Interstate and Foreign Commerce to organize a committee to give "sound, impartial, scientific advice" on color television. Dr. Condon was the head of this committee, which included

a group of scientific persons of repute, none of whom were employed by or had any connection directly or indirectly with any radio licensee or radio-equipment manufacturer. The report of this committee was released July 10, 1950, and considered at length the three color systems which [fol. 2317] had been proposed, and analyzed the present and potential performance of those systems. The report discloses that it took into consideration, among other matters, the testimony and demonstrations given before the Commission in the instant proceedings. No doubt this report refutes numerous of the findings made by the Commission and gives a far more favorable appraisement of the RCA system than that attributed to it by the Commission. Whether this report was considered by the Commission we do not know, but it is not referred to in the Commission's reports or its findings. As stated, this report was made to Congress, and we suppose a court could take judicial notice of it for some purposes, but again, in our view, it cannot be considered here for the purpose of impeaching the order of the Commission or the proceedings had before it. After all, Congress has conferred upon the Commission and charged it with the responsibility of conducting hearings and in reaching its own independent conclusions predicated thereon.

Another matter somewhat akin to those which we have just discussed was sought to be injected into this hearing by Pilot Radio Corporation, a plaintiff-intervenor. At the request of Pilot, two subpoenas duces tecum were issued out of this court on November 8, 1950, one addressed to the Commission and the other to CBS, requiring the production at the hearing in this matter of certain letters, documents, etc., described in said subpoenas. In response to the subpoenas the requested material was produced by the parties to whom the subpoenas were directed and lodged with the clerk of this court. At the same time, a motion was made to quash the subpoenas on the basis that the produced material was irrelevant and immaterial. The matter produced in the main consists of an exchange of letters between Honorable Edwin C. Johnson, Chairman of the Senate Interstate and Foreign Commerce Committee, and the Commission or members thereof, as well as correspondence exchanged between Senator Johnson and

the officials of CBS. In addition, there was offered in evidence at the time of the hearing an exchange of telegrams or letters between Senator Johnson and counsel for Pilot. We are advised by counsel that the purpose of these letters and telegrams is to show "that constant and vigorous pressure exerted by the Chairman" was responsible for the Commission's asserted precipitate action. The matter thus sought to be injected is, of course, no part of the record made before the Commission and it cannot be prop- [fol. 2318] erly considered here. In this connection, we should point out that neither Pilot nor any other intervenor nor plaintiffs make any charge or allegation in their pleadings that the Commission in making its order was influenced, cajoled or coerced by Senator Johnson or anybody else. In fact, other than the incident under discussion, there is not even an intimation by any of the interested parties that the Commission acted other than in good faith and in discharge of what it considered to be its statutory duty. The motion to quash these subpoenas duces tecum not heretofore passed upon is allowed.

Another matter which perhaps should be mentioned arises from plaintiffs' contention that the Commission improperly relied upon the testimony and assistance of one of its staff engineers who it is asserted was an interested party because he was the inventor of an automatic switch usable with a non-compatible system such as that proposed by CBS. The witness was not the owner of and had no financial interest in the patent. He demonstrated the device on the record, to which an objection was made; however, no objection was made to his further testimony or participation in the proceeding. In fact, it appears that the matter was not again mentioned until raised in this court. It appears to us that the interest of the witness if it had any relevancy went to the weight or credit to be given his testimony, and that this was a matter for the determination of the Commission. In any event, it furnishes no basis for invalidating the Commission's order.

In the view we take of the case, there is no evidence under the pleadings which this court could properly hear. We take this view notwithstanding the suggestion made by counsel for RCA in oral argument and reiterated in its brief, that RCA might desire to introduce witnesses at

a final hearing. We gather from the suggestion made that such testimony would be offered for the purpose of showing current developments, which we suppose means developments since the entry of the order, which have been called to the attention of the Commission and which it refuses to consider. Plaintiffs disclaim that this would constitute a trial de novo. With this contention we do not agree. We reiterate that under well established principles our function is to hear and determine the questions before us solely on the record made before the Commission.

[fol. 2319] Thus, as we evaluate the situation, there are two courses open, (1) to allow defendants' motion for a summary judgment, and (2) to vacate the order and send the proceeding back to the Commission for further consideration in view of recent developments in the color television field as well as the rapid changing economic situation. A pursuance of the latter course, assuming we have such authority, of which there may be doubt, would inevitably result in the prolongation of the controversy which badly needs the finality of decision which can be made only by the Supreme Court. In other words, the interests of all, so we think, will be better served with this controversy on its way up rather than back from whence it comes.

Even though we propose to allow defendants' motion for a summary judgment, it does not follow that the temporary restraining order heretofore entered should not remain in effect. In fact, we are definitely of the view that it should, until such time as the controversy is before the Supreme Court. While there may appear to be some inconsistency in pursuing this course, we think such procedure is within our discretion. In *National Broadcasting Co.* v. *United States*, 44 F. Supp. 688, a statutory court under circumstances quite similar to those here held it was without jurisdiction to review an order of the Commission, and dismissed the complaint. Even so, it granted a stay until the matter could be appealed to the Supreme Court. Holding that the District Court had jurisdiction the Supreme Court reversed. 316 U. S. 447. In doing so, it suggested (page 449), "The stay now in effect will be continued, on terms to be settled by the court below." Thereupon, the case was tried by the District Court on its merits, a summary judgment allowed in favor of the

defendants and the complaint again dismissed. And again the Commission's order was stayed pending appeal to the Supreme Court, and this time the judgment of the court below was affirmed. 319 U. S. 190. Insofar as we are able to discern from that opinion, the stay order allowed by the District Court remained in effect until the case was finally decided by the Supreme Court.

Thus concluding that the matter of a further stay of the Commission's order is discretionary, we shall state some of the reasons which move us to preserve the status quo. Of the nine million black and white television receivers in the hands of the public, there are none capable of receiving a picture either in color or black and white, [fol. 2320] broadcast under the proposed standards. In order to receive a black and white picture, it is necessary that a receiver be equipped with an adapter estimated to cost $50.00, plus the expense of installation. In other words, it would cost the American public nearly one-half billion dollars to equip existing sets to receive, under the proposed system, black and white pictures, and even then admittedly they would be of a grade inferior to present black and white pictures. In addition, in order to receive a picture in color, it will be necessary to add to an existing receiver a converter, estimated to cost about $100.00, plus the expense of installation. Thus, this will cost the public nearly one billion dollars. In other words, upon an expenditure by the public of one and one-half billion dollars, adapters and converters can be added to existing receivers so as to receive, under the proposed system, pictures in black and white and in color.

But this is only a part of the story insofar as it relates to the public. It was here stated in oral argument and not disputed that there are no adapters or converters on the market and that manufacturers would require a period of from six to eight months before they could be made available. So it seems reasonable to conclude that if the instant order was now in effect, there would be no broadcasting under the proposed standards for many months, for the simple reason that there would be no sets capable of receiving such programs. And it does not square with common sense to think that manufacturers would rush into the business either of manufacturing adapters and converters for existing sets or manufacturing sets with built-

in adapters and converters while this controversy is pending. And to maintain that the public in any considerable number would purchase adapters and converters, assuming they were available, under the existing state of doubt and uncertainty, is to cast a reflection on the intelligence of people.

Another matter which does not escape our attention is the insistence displayed by the defendants, including CBS, that this order at all hazards must become effective November 20, 1950, the date fixed by the Commission. This apparently was a magic date, so much so that defendants opposed a postponement until this court could have an opportunity to study and decide the issues presented. Perhaps the most substantial attack made upon the Commission's order is the adoption of standards which call for an incompatible system which, as admitted by all the parties including the defendants and CBS, is less desir-
[fol. 2321] able than a compatible system. Of course, the Commission's position in this respect is predicated upon its conclusion that no satisfactory compatible system was demonstrated, while the incompatible system which it approved was satisfactory. And the main argument against a stay of the order is that incompatability is and will rapidly increase as the public continues to purchase existing receivers. As is stated in defendants' brief, "The grant by this court of an interlocutory injunction will encourage the increased sale of receivers requiring outside adaption to receive CBS color transmission in black and white. The difference between this cost and the cost of adapting receivers at the factory is the price the American public will pay if the Commission's decision is finally upheld." This argument is based on the assumption that the Supreme Court will sustain the validity of the order. It ignores a contrary possibility. Certainly this court is possessed of no such omnipotence, and we doubt if the Commission is. Even if the order was in effect, the owners of existing receivers could not within the next several months obtain the equipment which would enable them to receive the authorized broadcasts. But assume that they could and did so. Where would the public find itself in the event the order was held invalid by the Supreme Court?

In our view, the public interest in this matter has been magnified far beyond its true perspective. We are even told that this suit is a contest between television manufacturers and the public on some theory that it is to the financial gain of the former to refuse and delay the manufacture of television sets capable of receiving the broadcast authorized. Any merit in this contention, so we think, is completely overshadowed by what appears to be evident, that is, that the contest is mainly between two great broadcasting systems for a position of advantage in this rapidly developing field of television.

Another reason why this order should be stayed is the existing economic situation, recognized by Commissioner Sterling in his dissenting opinion, wherein he stated, "The problems confronting manufacturers today in terms of production, procurement and manpower to meet the demands of national defense are serious ones. * * It is well known that there are serious shortages of tubes and resisters as well as basic materials. * * Moreover, in many instances industry has been required to divert its TV engineering experts to problems of production for defense because of the close relationship of TV techniques [fol. 2322] to radar and other electronic devices the government requires." It is a matter of common knowledge that the situation thus described becomes more acute with each passing day, and the prospects are that it will be far worse before it is better. It is hardly conceivable that either the Commission or the government would under such circumstances desire, much less insist, that the order in controversy be made effective.

Our purpose is to restrain the effective date of the order until the aggrieved parties have had an opportunity to perfect an appeal to the Supreme Court. Therefore, the temporary restraining order heretofore entered will remain and continue in force until April 1, 1951, or until terminated by the Supreme Court. And we re-adopt the findings heretofore made in support of the continuation of such order.

A summary judgment will be entered in favor of the defendants and against the plaintiffs, and the complaint dismissed. No testimony having been heard or considered

other than the record made before the Commission, no findings are required in support of such judgment.

DISCENTING OPINION

LA BUY, D. J., dissenting:

It is conceded by all and it is self-evident that the best system of color television is a compatible one; that is, a system requiring no change whatever in existing receivers for the reception of black and white as well as color pictures. Indeed, compatability is the coveted goal of all engineers and scientists engaged in the television industry.

In its order of October 11, 1950 (F3), the Commission stated:

> ". . . that the state of the television art is such that new ideas and new inventions are matters of weekly, even daily occurrence; . . ."

And again, in recognizing the rapid developments in the field, the Commission said (B92, First Report):

> "The third matter we refer to is the possibility of new color systems and improvements in existing color systems which have been informally called to our attention since the hearings closed. Of course, these are not matters of record and cannot be relied on in reaching a decision unless the record is reopened. In considering these developments the Commission is aware that the institution of these proceedings stimulated great activity in the color field and that since [fol. 2323] fundamental research cannot be performed on schedule, it is possible that much of the fruit of this research is only now beginning to emerge. ***"

Commissioner Sterling, dissenting with what he characterized the "premature action taken by the majority", also stated among other reasons for his disapproval of the action of the Commission "new developments came fast in the closing days of the hearing and immediately

thereafter". Commissioner Hennock, who also disagreed with the Commission's speedy action, expressed her views as follows,

> " . . . in the light of the progress made in the development of color television since the start of the instant proceeding, I think it is essential to defer final decision in this matter until June 30, 1951.
>
> "*** It is of vital importance to the future of television that we make every effort to gain the time necessary for further experimentation leading to the perfection of a compatible color television system. ***"

In its First Report, the Commission stated:

> "*** two difficult courses of action are open to *to* the Commission. The first course of action is to reopen the record . . . The second course of action is to adopt a final decision.
>
> "The advantage of the first course of action is that the Commission would not be compelled to speculate as to an important basis for its decision . . . The disadvantage is that it would postpone a final decision and hence would aggravate the compatability problem. *** The advantage of the second course of action is that it would bring a speedy conclusion to the matters in issue and would furnish manufacturers with a real incentive to build a successful tricolor tube as soon as possible. *** The disadvantage is that the Commission's determination on an important part of its decision would be based on speculation and hope rather than on demohstrations."

On October 4, 1950 RCA petitioned the Commission to review the progress made in developing and perfecting the various systems before a final determination. It offered to show the Commission improvements in certain phases of their system about which the Commission expressed doubts. The Commission denied the petition giving among other reasons that "delay in reaching a de- [fols. 2324-2325] termination . . . would not be condusive to the orderly and expeditious dispatch of the Commission's business".

The Commission recognized and the record before the Commission is replete with evidence that rapid strides are being made toward the perfection of a fully compatible system. There is ample basis for the conclusion that the scientists laboring in the laboratories of the industry may soon resolve the problem of compatability. In view of the admittedly fluid state of the art, it is difficult to understand why the Commission refused to hear additional evidence and chose instead a course of action, using its own words, based "on speculation and hope rather than on demonstrations."

It is estimated that the cost of conversion to the new standards set by the Commission will cost the public in excess of a billion dollars. If hope and speculation may lawfully be substituted for evidence as a foundation for an important part of its decision, it was an abuse of discretion not to have indulged this speculation and hope in the public interest. The Commission chose a speedy determination of an issue of great public interest in preference to the more patient consideration which the magnitude of the question warranted. To prohibit the broadcast of color in completely compatible systems, whether it is RCA or any other fully compatible system, is a bar to competition between compatible and incompatible color and is unreasonable and arbitrary.

It is my opinion the Commission's precipitous action in entering the order, the impact of which will require owners of television sets to install equipment at a cost of many hundreds of millions of dollars, and its refusal to hear additional evidence clearly indicates an abuse of discretion and constituted action which was arbitrary and capricious.

I would overrule the motion to dismiss and for a summary judgment and would restrain the enforcement of the order.

[fols. 2326-2327] IN THE UNITED STATES DISTRICT COURT, FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 50-C-1459

RADIO CORPORATION OF AMERICA, NATIONAL BROADCASTING COMPANY, INC., and RCA VICTOR DISTRIBUTING CORPORATION, *Plaintiffs*,

vs.

UNITED STATES OF AMERICA and FEDERAL COMMUNICATIONS COMMISSION, *Defendants*

ORDER—December 22, 1950

This cause having come on to be heard on plaintiffs' motion for interlocutory injunction and for a temporary restraining order, and on defendants' motion for summary judgment and to dismiss the Complaint, and the Court having heard the arguments of counsel and having considered the briefs filed herein, and the Court being fully advised in the premises,

It is hereby ordered that the temporary restraining Order of the Commission of October 10, 1950, be and it hereby is continued in full force and effect until April 1, 1951, or until terminated by the Supreme Court of the United States, and the findings of fact and conclusions of law heretofore made in support of said temporary restraining order are hereby re-adopted.

It is further ordered that a summary judgment be and it hereby is entered in favor of the defendants and against the plaintiffs and the complaint is dismissed.

J. Earl Major, Judge, United States Court of Appeals, Seventh Circuit.

Philip L. Sullivan, Judge, United States District Court.

Dissenting: Walter J. La Buy, Judge, United States District Court.

[fols. 2328-2329] IN THE UNITED STATES DISTRICT COURT, FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

50-C-1459

RADIO CORPORATION OF AMERICA, NATIONAL BROADCASTING COMPANY, INC., and RCA VICTOR DISTRIBUTING CORPORATION,

vs.

UNITED STATES OF AMERICA and FEDERAL COMMUNICATIONS COMMISSION

COLUMBIA BROADCASTING SYSTEM, INC., *Party Defendant*

SIGHTMASTER CORP., WELLS-GARDNER & CO., RADIO CRAFTSMEN, INC., TELEVISION INSTALLATION SERVICE ASSOCIATION, PILOT RADIO CORPORATION, LOCAL 1031, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL, and EMERSON RADIO & PHONOGRAPH CORP., *Intervening Plaintiffs*

ORDER—January 23, 1951

The Court being fully advised in the premises it is

Ordered that the order heretofore entered herein on January 19, 1951, be and it is hereby vacated and with the consent of the parties to this cause it is

Further ordered that the last paragraph of the order entered herein on December 22, 1950, be and it is hereby amended for the purpose of clarification, nunc pro tunc as of that date to read as follows:

> "It is further ordered that a summary judgment be and it is hereby entered in favor of the defendants and against the plaintiffs, including the plaintiff-intervenors, and that the complaints, including those of the plaintiff-intervenors, are dismissed."

[fol. 2330] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed January 25, 1951

To: The Hon. J. Earle Major, Circuit Judge for the Seventh Circuit; The Hon. Philip L. Sullivan, District Judge for the Northern District of Illinois; The Hon. Walter J. La Buy, District Judge for the said District.

Now come Radio Corporation of America, National Broadcasting Company, Inc. and RCA Victor Distributing Corporation, plaintiffs herein, and Emerson Radio & Phonograph Corporation, Pilot Radio Corporation, The Radio Craftsmen, Incorporated, Wells-Gardner & Co., Sightmaster Corporation, Local 1031, International Brotherhood of Electrical Workers, AFL, and Television Installation Service Association, plaintiff-interveners herein, and considering themselves aggrieved by the orders of this Court rendered and entered in the above entitled cause on the 22nd day of December, 1950, and the 23rd day of January, 1951, in so far as said orders entered summary judgment in favor of the defendants and against the plaintiffs, inclu ling the plaintiff-interveners, and dismissed the complaints, including those of the plaintiff-interveners, do hereby pray that an appeal be allowed to the Supreme Court of the United States from that part of said order because of errors prejudicial to plaintiffs and plaintiff-interveners which are set forth in the assignment of errors presented and filed herewith; that citation be issued in accordance with law; that an order be made fixing the amount [fol. 2331] of security which said plaintiffs and plaintiff-interveners shall give and furnish upon such appeal; and that the material parts of the record, proceedings and papers upon which said order was based, duly authenticated, be sent to the Supreme Court of the United States in accordance with the rules in such case made and provided.

Dated: January 25, 1951.

Respectfully submitted, Weymouth Kirkland; Kirkland, Fleming, Green, Martin & Ellis, By Howard Ellis, A Member of the Firm, Attorneys for Plaintiffs, Office and Post Office Address, 33 North La Salle Street, Chicago, Illinois.

Of Counsel: Cahill, Gordon, Zachry & Reindel, New York City, John T. Cahill, Joseph V. Heffernan, John W. Nields.

Nash, Ahern and McNally, By Thomas D. Nash, A Member of the Firm, Attorneys for intervener-plaintiff, Emerson Radio & Phonograph Corporation, Office and Post Office Address, 111 West Washington Street, Chicago, Illinois.

Of Counsel: Paul, Weiss, Rifkind, Wharton & Garrison, New York City, Simon H. Rifkind.

[fol. 2332] Schapiro and Schiff, By B. C. Schiff, A Member of the Firm, Attorneys for intervener-plaintiff, Pilot Radio Corporation, Office and Post Office Address: 38 South Dearborn Street, Chicago, Illinois.

Of Counsel: Mnuchin & Smith, New York City, Leon Mnuchin, Jerome S. Zurkow.

Kelly, Kelly & Kelly, By John J. Kelly, Jr., A Member of the Firm, Attorneys for intervener-plaintiff, The Radio Craftsmen, Incorporated, Office and Post Office Address: 111 West Washington Street, Chicago, Illinois.

Righeimer and Rigneimer, By Frank S. Righeimer, Jr., A Member of the Firm, Attorneys for intervener-plaintiff, Wells-Gardner & Co., Office and Post Office Address: 135 South La Salle Street, Chicago, Illinois.

Carl Pomerance, Attorney for intervener-plaintiff, Sightmaster Corporation, Office and Post Office Address: 135 South La Salle Street, Chicago, Illinois.

Jacobs and Kamin, By Alfred Kamin, A Member of the Firm, Attorneys for intervener-plaintiff, Local 1031, International Brotherhood of Electrical [fol. 2333] Workers, AFL, Office and Post Office Address: 201 North Wells Street, Room 1524, Chicago 6, Illinois.

Schradzke and Gould, By Gerald Ratner, Attorneys for intervener-plaintiff, Television Installation Service Association, Office and Post Office Address: 33 North La Salle Street, Chicago 2, Illinois.

[fols. 2333a-2334] [File endorsement omitted.]

[fols. 2335-2338] Bond on appeal for $250.00 approved and filed January 25, 1951, omitted in printing.

[fol. 2339] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed January 25, 1951

Radio Corporation of America, National Broadcasting Company, Inc. and RCA Victor Distributing Corporation, plaintiffs in the above entitled cause, and Emerson Radio & Phonograph Corporation, Pilot Radio Corporation, The Radio Craftsmen, Incorporated, Wells-Gardner & Co., Sightmaster Corporation, Local 1031, International Brotherhood of Electrical Workers, AFL, and Television Installation Service Association, plaintiff-interveners in the above entitled cause, in connection with their appeal to the Supreme Court of the United States, do hereby file the following assignment of errors upon which they will rely in their prosecution of said appeal from the orders of the statutory three-judge United States District Court for the Northern District of Illinois, Eastern Division, entered on the 22nd day of December, 1950, and the 23rd day of January, 1951, insofar as said orders entered summary judgment in favor of the defendants and against the plaintiffs, including the plaintiff-interveners, and dismissed the complaints, including those of the plaintiff-interveners.

Said Court erred:

1. In failing to hold that the findings of the Commission are not supported by substantial evidence.

2. In failing to hold that the conclusions of the Com-
[fol. 2340] mission are not supported by the findings or by substantial evidence.

3. In failing to hold that the Order of the Commission is not supported by the conclusions, by the findings, or by substantial evidence, and is not supported in law.

4. In failing to hold that the adoption by the Federal Communications Commission (herein called the "Commis-

sion") of commercial color television standards which are incompatible with existing black and white television standards * is beyond the jurisdiction of the Commission as contrary to the statutory standard of the "public convenience, interest or necessity", as violative of the Commission's statutory obligation to promote the "larger and more effective use of radio", and as not supported in the Communications Act of 1934, as amended, or otherwise.

[fol. 2341] 5. In failing to hold that the adoption by the Commission of commercial color television standards which are incompatible with existing black and white television

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* Incompatability means that the programs broadcast according to such incompatible color television standards may not be received by any of the black and white television receivers in the hands of the public (more than 9 million as of November, 1950) either in color or in black and white. As stated by the District Court:

> "* * * In order to receive a black and white picture [from the incompatible color system] it is necessary that a receiver be equipped with an adapter estimated to cost $50.00, plus the expense of installation. In other words, it would cost the American public nearly one-half billion dollars to equip existing sets to receive, under the proposed system, black and white pictures, and even then admittedly they would be of a grade inferior to present black and white pictures. In addition, in order to receive a picture in color, it will be necessary to add to an existing receiver a converter, estimated to cost about $100.00, plus the expense of installation. Thus, this will cost the public nearly one billion dollars. In other words, upon an expenditure by the public of one and one-half billion dollars, adapters and converters can be added to existing receivers so as to receive, under the proposed system, pictures in black and white and in color."

With a compatible color television system, on the other hand, all existing black and white receivers can receive compatible color television broadcasts, as a black and white picture, without any modification of the receiver whatever and without the degradation of picture quality involved in the incompatible system.

standards is arbitrary, capricious and an abuse of the Commission's discretion.

6. In failing to hold that the refusal of the Commission to permit the commercial broadcasting of compatible color television is beyond the jurisdiction of the Commission, as contrary to the statutory standard of the "public convenience, interest or necessity", as violative of the Commission's statutory obligation to promote the "larger and more effective use of radio", as beyond its authority to "regulate the kind of apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station", and as not supported in the Communications Act of 1934, as amended.

7. In failing to hold that the refusal of the Commission to permit the commercial broadcasting of compatible color television is arbitrary, capricious and an abuse of the Commission's discretion.

8. In failing to hold that the promulgation of an order which the Commission stated was based in important respects on "speculation and hope", was arbitrary, capricious, an abuse of the Commission's discretion and contrary to law.

9. In failing to hold that findings with respect to critical aspects of a dynamic science were not supported by substantial evidence, where those findings were based upon early evidence superseded by evidence of later developments during the hearings which made the early evidence no longer representative of the facts.

[fol. 2342] 10. In failing to hold that the Commission wrongfully refused to make certain basic findings essential to a valid disposition of the question of commercial color television standards, which findings would require the adoption of compatible color television standards rather than the standards promulgated by the order.

11. In failing to hold that the refusal of the Commission to permit the commercial broadcasting of compatible color television systems is not supported by the Commission's conclusions or findings, or by the evidence.

12. In failing to hold that the Commission had no authority to suppress competition in television broadcasting by prohibiting the broadcasting of color by compatible systems, whether RCA or any other compatible system, in competition with incompatible color.

13. In failing to hold that the Commission violated its statutory obligation and was arbitrary and capricious in refusing to take account in its decision of facts of determinative significance although these facts were fully available to it.

14. In holding that the District Court was without authority to consider determinative events occurring after the hearings closed for the purpose of deciding whether the Commission wrongfully refused to consider these same facts before promulgating the order.

15. In failing to hold that the RCA Progress Report of July 31, 1950, which set forth certain of such determinative events, was a part of the administrative record and that the admitted refusal of the Commission to consider this report was in violation of the Administrative Procedure Act and the Communications Act of 1934, as amended.
[fol. 2343] 16. In failing to hold that the Report of the Advisory Committee on Color Television to the Committee on Interstate and Foreign Commerce of the United States Senate (the so-called Condon Committee Report) was a part of the administrative record and that the admitted refusal of the Commission to consider this Report was in violation of the administrative Procedure Act and the Communications Act of 1934, as amended.

17. In failing to hold that the Commission erred in denying the RCA Petition dated October 4, 1950, requesting the Commission to consider improvements in the performance of the RCA color television system, and to consider further all color television systems in order to obtain additional information, particularly when the Commission had stated in its First Report it should have such information before promulgating commercial color television standards.

18. In failing to hold that the order of the Commission is invalid because it was adopted without obtaining such additional information.

19. In failing to hold that it was illegal for the Commission to refuse to obtain such information because the television manufacturing industry could not agree to the unlawful and impossible conditions placed by the Commission upon the receipt of that information.

20. In failing to hold that the Commission's order is in-

valid in that it was based on the non-compliance by the television manufacturing industry with conditions which the Commission was without authority to impose.

21. In failing to hold that the Commission erred in permitting an engineer on the Commission's staff who had an interest in the adoption of an incompatible system to [fol. 2344] participate in the formulation and preparation of the Commission's reports and order complained of, and in relying on the advice of that interested staff engineer in adopting incompatible color television standards.

22. In failing to hold that the order of the Commission is contrary to the terms of the Commission's notice of July 11, 1949, pursuant to which the hearings on which the order purports to be based were held.

23. In failing to hold that the order of the Commission deprives the plaintiffs and plaintiff-interveners of property without due process of law, contrary to the Fifth Amendment to the Constitution of the United States.

24. In failing to vacate the order and send the proceedings back to the Commission for further consideration rather than allowing defendants' motion for summary judgment and dismissing the complaint.

25. In failing to rule on many determinative issues of law and fact, the decision of which are essential to the proper disposition of this appeal under Section 402(a) of the Communications Act of 1934, as amended.

26. In failing to hold that the Commission wrongfully refused to permit intervener-plaintiffs Emerson Radio & Phonograph Corporation and Wells-Gardner & Co. to intervene in the administrative proceedings and to present relevant evidence.

27. In granting the motion of defendant Federal Communications Commission to quash the subpoena duces tecum issued by the District Court at the request of intervener-plaintiff Pilot Radio Corporation and in refusing to consider the material called for in the subpoena.

28. In entering summary judgment in favor of the defendants and against the plaintiffs, including the plaintiff-interveners.

[fol. 2345] 29. In dismissing the complaint and the intervening complaint.

Wherefore, plaintiffs and plaintiff-interveners pray that the orders entered herein on the 22nd day of December, 1950, and the 23rd day of January, 1951, insofar as said orders entered summary judgment in favor of the defendants and against the plaintiffs, including the plaintiff-interveners, and dismissed the complaints, including those of plaintiff-interveners, be reversed, and that such other and further relief be granted as to the Court may seem just and proper.

Dated: January 25, 1951.

Weymouth Kirkland, Kirkland, Fleming, Green, Martin & Ellis, By Howard Ellis, A Member of the Firm, Attorneys for Plaintiffs, Office and Post Office Address: 33 North La Salle Street, Chicago, Illinois.

Of Counsel: Cahill, Gordon, Zachry & Reindel, New York City, John T. Cahill, Joseph V. Heffernan, John W. Nields.

[fol. 2346] Nash, Ahern and McNally, By Thomas D. Nash, A Member of the Firm, Attorneys for intervener-plaintiff, Emerson Radio & Phonograph Corporation, Office and Post Office Address: 111 West Washington Street, Chicago, Illinois.

Of Counsel: Paul, Weiss, Rifkind, Wharton & Garrison, New York City, Simon H. Rifkind.

Schapiro and Schiff, By B. E. Schiff, A Member of the Firm, Attorneys for intervener-plaintiff, Pilot Radio Corporation, Office and Post Office Address: 38 South Dearborn Street, Chicago 3, Illinois.

Of Counsel: Mnuchin & Smith, New York City, Leon Mnuchin, Jerome S. Zurkow.

Kelly, Kelly & Kelly, By John J. Kelly, Jr., A Member of the Firm, Attorneys for intervener-plaintiff, The Radio Craftsmen, Incorporated, Office and Post Office Address: 111 West Washington Street, Chicago, Illinois.

Righeimer and Righeimer, By Frank S. Righeimer, Jr., A Member of the Firm, Attorneys for intervenor-plaintiff, Wells-Gardner & Co., Office and

Post Office Address: 135 South La Salle Street, Chicago, Illinois.

[fol. 2347] Carl Pomerance, Attorney for intervenor-plaintiff, Sightmaster Corporation, Office and Post Office Address: 135 South La Salle Street, Chicago, Illinois.

Jacobs and Kamin, By Alfred Kamin, A Member of the Firm, Attorneys for intervener-plaintiff, Local 1031, International Brotherhood of Electrical Workers, AFL, Office and Post Office Address: 201 North Wells Street, Room 1524, Chicago 6, Illinois.

Schradzke & Gould, By Gerald Ratner, Attorneys for intervener-plaintiff, Television Installation Service Association, Office and Post Office Address: 33 North La Salle Street, Chicago 2, Illinois.

[fols. 2347a-2410] [File endorsement omitted.]

[fol. 2411] IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action No. 50-C-1459

RADIO CORPORATION OF AMERICA, NATIONAL BROADCASTING COMPANY, INC., and RCA VICTOR DISTRIBUTING CORPORATION, *Plaintiffs*,

against

UNITED STATES OF AMERICA and FEDERAL COMMUNICATIONS COMMISSION, *Defendants*.

ORDER ALLOWING APPEAL—January 25, 1951

Radio Corporation of America, National Broadcasting Company, Inc. and RCA Victor Distributing Corporation, plaintiffs herein, and Emerson Radio & Phonograph Corporation, Pilot Radio Corporation, The Radio Craftsmen, Incorporated, Wells-Gardner & Co., Sightmaster Corporation, Local 1031, International Brotherhood of Electrical Workers, AFL, and Television Installation Service Association, plaintiff-interveners herein, having made and filed their petition praying for an appeal to the Supreme Court

of the United States from the orders of this Court in this cause entered on December 22nd, 1950, and January 23, 1951, insofar as said orders entered summary judgment in favor of the defendants and against the plaintiffs, including the plaintiff-interveners, and dismissed the complaints, including those of the plaintiff-interveners, and having presented their assignment of errors and prayer for reversal and their statement as to the jurisdiction of the Supreme Court of the United States on appeal pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided,

Now, therefore, it is hereby ordered that said appeal [fols. 2412-2418] be and the same hereby is allowed as prayed for and that the record on appeal be made and certified and sent to the Supreme Court of the United States in accordance with the rules of that Court.

It is further ordered that the amount of the appeal bond, to be approved by this Court, be and the same is hereby fixed in the sum of $250.

It is further ordered that citation shall issue in accordance with law.

J. Earl Major, Judge of the United States, Court of Appeals for the Seventh Circuit.

Philip L. Sullivan, Judge of the United States District Court.

——— ———, Judge of the United States District Court.

Dated: January , 1951.

[fols. 2419-2420] In the United States District Court

[Title omitted]

Order—January 25, 1951

In accordance with the provisions of the praecipe herein, and pursuant to the motion to transmit certain original documents on the appeal of the above entitled cause to the Supreme Court of the United States, it is

Ordered, that the original of all documents, transcripts, exhibits or other parts of this Court's records in the above entitled cause, of which there are no copies on file, may all

be forwarded in lieu of copies of such documents to the Clerk of the Supreme Court of the United States as part of the transcript of the record on the appeal herein.

Enter:

J. Earl Major, Judge of the United States Court of Appeals for the Seventh Circuit.

Philip L. Sullivan, Judge of the United States District Court.

———, Judge of the United States District Court.

Dated: January 25, 1951.

[fols. 2421-2423] Citation in usual form filed January 25, 1951, omitted in printing.

[fol. 2424] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ADMISSION OF SERVICE OF PAPERS ON APPEAL—Filed January 25, 1951

Due and timely service of a copy of each of the following papers in the above entitled case is hereby admitted this 29th day of January, 1951:

1. Petition for Appeal.
2. Order Allowing Appeal.
3. Assignment of Errors and Prayer for Reversal.
4. Citation on Appeal.
5. Statement as to Jurisdiction.
6. Copy of Statement Required by Paragraph 2, Rule 12 of Rules of the Supreme Court of the United States.

Attorney General of the United States, By Anthony Scariand.

United States Attorney for the Northern District of Illinois, By Anthony Scariand.

Federal Communications Commission, By Anthony Scariand.

Arvey, Hodes & Mantynband, By George L. Siegel, Attorneys for Intervener-Defendant, Columbia Broadcasting System, Inc.

[fols. 2424a-2425] [File endorsement omitted.]

[fol. 2426] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE—Filed January 25, 1951

To The Clerk of the United States District Court for the Northern District of Illinois, Eastern Division:

You will please prepare a transcript of the Record in the above entitled cause to be transmitted to the Clerk of the Supreme Court and include in said transcript the following:

1. Complaint and attached exhibits, filed by Radio Corporation of America, National Broadcasting Company, Inc., and RCA Victor Distributing Corporation on October 17, 1950.

2. Motion of plaintiffs for temporary injunction and other relief, and notice thereof to defendants, filed October 24, 1950.

3. Order of Hon. J. Earle Major convening statutory three-judge District Court.

4. Motions of defendants to dismiss the complaint or for summary judgment, filed October 30, 1950.

[fol. 2427] 5. Affidavit of Benedict P. Cottone in support of defendants' motions to dismiss or for summary judgment, filed October 30, 1950.

6. Record of proceedings before the Federal Communications Commission, Index thereto and Certificate of the Secretary of the Commission, attached as Appendix A to the affidavit of Benedict P. Cottone, filed October 30, 1950.

7. Motion of Pilot Radio Corporation to intervene as a plaintiff and notice thereof to plaintiffs and defendants, filed November 14, 1950.

8. Intervening complaint and exhibits of Pilot Radio Corporation filed November 14, 1950.

9. Motion of Columbia Broadcasting System, Inc., to intervene as a defendant and notice thereof to plaintiffs and defendants, filed October 30, 1950.

10. Motion of Columbia Broadcasting System, Inc. to dismiss the complaint or for summary judgment, filed October 30, 1950.

11. Affidavit of Adrian Murphy filed October 30, 1950.

12. Motion of Wells-Gardner & Co. to intervene as a plaintiff and notice thereof to the parties, filed November 10, 1950.

13. Intervening complaint of Wells-Gardner & Co. filed November 14, 1950.

14. Motion of Television Installation Service Association to intervene as a plaintiff and notice thereof to parties filed November 10, 1950.

[fol. 2428] 15. Intervening complaint of Television Installation Service Association filed November 14, 1950.

16. Subpoena Duces Tecum issued by the United States District Court, Northern District of Illinois, November 8, 1950.

17. Petition of Sightmaster Corporation for leave to intervene and notice thereof to parties filed November 10, 1950.

18. Intervening complaint of Sightmaster Corporation filed November 14, 1950.

19. Motion of The Radio Craftsmen, Incorporated to intervene as a plaintiff and notice thereof to parties filed November 10, 1950.

20. Intervening complaint of The Radio Craftsmen, Incorporated filed November 14, 1950.

21. Motion of Emerson Radio & Phonograph Corporation for leave to intervene and notice thereof to parties, filed November 14, 1950.

22. Pleading in intervention of Emerson Radio & Phonograph Corporation filed November 14, 1950.

23. Motion of Local 1031, International Brotherhood of Electrical Workers, AFL, to intervene as a plaintiff and notice thereof to parties, filed November 14, 1950.

2 . Intervening complaint of Local 1031, International Brotherhood of Electrical Workers, AFL, filed November 14, 1950.

25. Affidavits of C. B. Jolliffe, Walter A. Buck, John H. MacDonald and Walter M. Norton submitted on behalf of plaintiffs, filed November 9, 1950.

[fol. 2429] 26. Supplementary affidavit of Walter M. Norton with all annexes, filed on November 9, 1950.

27. Affidavit of Oscar Katz submitted on behalf of Columbia Broadcasting System, Inc., with exhibits, sworn to November 10, 1950.

28. Affidavit of Earl W. Muntz submitted on behalf of

Columbia Broadcasting System, Inc., with exhibits, sworn to November 8, 1950.

29. Affidavit of Herbert V. Akerberg submitted on behalf of Columbia Broadcasting System, Inc., sworn to November 10, 1950.

30. Affidavit of Samuel I. Rosenman submitted on behalf of Columbia Broadcasting System, Inc., with exhibits, sworn to November 10, 1950.

31. Affidavit of Frank Stanton submitted on behalf of Columbia Broadcasting System, Inc., with exhibits, sworn to November 10, 1950.

32. Motion to Quash and Response of Federal Communications Commission to Subpoena Duces Tecum, filed November 13, 1950.

33. Affidavit of Max Goldman submitted on behalf of defendants, filed November 13, 1950.

34. Correspondence concerning color television between Senator Edwin C. Johnson and Federal Communications Commission or its members with descriptive index and Federal Communications Commission's Secretary's Certificate, filed November 14, 1950; and similar correspondence between Senator Johnson and Columbia Broadcasting System, Inc., filed November 15, 1950.

[fol. 2430] 35. Affidavit of George H. Brown submitted on behalf of plaintiffs, sworn to November 13, 1950.

36. Affidavit of Milton Chasin submitted on behalf of plaintiffs, sworn to November 13, 1950.

37. Affidavit of Frank Perloff submitted on behalf of plaintiffs, sworn to November 13, 1950.

38. Affidavit of William Blank submitted on behalf of plaintiffs, sworn to November 13, 1950.

39. Affidavit of Harry Lefkowitz submitted on behalf of plaintiffs, sworn to November 13, 1950.

40. Affidavit of J. O. Reinecke submitted on behalf of Local 1031, International Brotherhood of Electrical Workers, AFL, filed November 13, 1950.

41. Affidavit of Richard L. Hirsch and Harold V. Levin submitted on behalf of Local 1031, International Brotherhood of Electrical Workers, AFL, filed November 13, 1950.

42. Order of District Court entered October 30, 1950 granting leave to intervene to Columbia Broadcasting System, Inc.

43. Orders of District Court dated November 14, 1950,

granting leave to intervene to (1) Wells-Gardner & Co., (2) Emerson Radio & Phonograph Corporation, (3) Local 1031, International Brotherhood of Electrical Workers, AFL, (4) Pilot Radio Corporation, (5) Television Installation Service Association, (6) The Radio Craftsmen, Incorporated, (7) Sightmaster Corporation.

44. Temporary restraining order by District Court entered on November 16, 1950, and Findings of Fact and [fol. 2431] Conclusions of law.

45. Affidavit of Isidor Goldberg submitted on behalf of intervener-plaintiff Pilot Radio Corporation, sworn to November 17, 1950, and attachments thereto.

46. Record of proceedings before the District Court on November 14, 15 and 16, 1950.

47. Briefs and/or memoranda submitted to the District Court on behalf of plaintiffs, intervener-plaintiff Emerson Radio & Phonograph Corporation, defendants and intervener-defendant Columbia Broadcasting System, Inc.

48. Opinions of District Court dated December 20, 1950.

49. Order of District Court entered December 22, 1950.

50. Order of District Court entered January 23, 1951.

51. Petition for appeal.

52. Assignment of errors and prayer for reversal.

53. Statement as to jurisdiction.

54. Order allowing appeal.

55. Statement required by Paragraph 2, Rule 12 of the Rules of the Supreme Court of the United States.

56. Order permitting transmission of original documents.

57. Citation on appeal.

58. Admission of service of papers on appeal.

59. The praecipe with acknowledgment of service and waiver.

60. Clerk's certificate.

Said transcript is to be prepared as required by law and the Rules of this Court and Rules of the Supreme Court [fol. 2432] of the United States, and is to be filed in the Office of the Clerk of the Supreme Court.

Dated: January 25, 1951.

Weymouth Kirkland, Kirkland, Fleming, Green, Martin & Ellis, By Howard Ellis, A Member of the Firm, Attorneys for plaintiffs, Office and P. O. Address: 33 No. La Salle Street, Chicago, Illinois.

Of Counsel: Cahill, Gordon, Zachry & Reindel, New York City, John T. Cahill, Joseph V. Heffernan, John W. Nields.

Nash, Ahern and McNally, By Thomas D. Nash, A Member of the Firm, Attorneys for intervener-plaintiff, Emerson Radio & Phonograph Corporation, Office and P. O. Address: 111 West Washington Street, Chicago, Illinois.

Of Counsel: Paul, Weiss, Kirkland, Wharton & Garrison, New York City, Simon H. Rifkind.

[fol. 2433] Schapiro and Schiff, By B. C. Schiff, A Member of the Firm, Attorneys for intervener-plaintiff, Pilot Radio Corporation, Office and P. O. Address: 38 South Dearborn Street Chicago 3, Illinois.

Of Counsel: Mnuchin & Smith, New York City, Leon Mnuchin, Jerome S. Zurkow.

Kelly, Kelly & Kelly, By John J. Kelly, Jr., A Member of the Firm, Attorneys for intervener-plaintiff, The Radio Craftsmen, Incorporated, Office and P. O. Address: 111 West Washington Street, Chicago, Illinois.

Righeimer and Righeimer, By Frank S. Righeimer, Jr., A Member of the Firm, Attorneys for intervener-plaintiff, Wells-Gardner & Co., Office and P. O. Address: 135 South La Salle Street, Chicago, Illinois.

Carl Pomerance, Attorney for intervener-plaintiff, Sightmaster Corporation, Office and P. O. Address: 136 South La Salle Street, Chicago, Illinois.

Jacobs and Kamin, By Alfred Kamin, A Member of the Firm, Attorneys for intervener-plaintiff, Local 1031, International Brotherhood of Electrical Workers, AFL, Office and P. O. Address: 201 North Wells Street, Room 1524, Chicago 6, Illinois.

[fol. 2434] Schradzke and Gould, By Gerald Ratner, Attorneys for intervener-plaintiff, Television Installation Service Association, Office and P. O. Address: 33 North La Salle Street, Chicago 2, Illinois.

Service of the above praecipe accepted and acknowledged. The defendants and the intervener-defendant waive their right to file a designation of additional portions of the record.

Attorney General of the United States, By Anthony Scariand, United States Attorney for the Northern District of Illinois, By Anthony Scariand, Federal Communications Commission, By Anthony Scariand, Arvey, Hodes and Mantynband, By George L. Siegel, Attorneys for intervener-defendant, Columbia Broadcasting System, Inc.

[fols. 2434a-2459] [File endorsement omitted.]

[fol. 2460] In the United States District Court

[Title omitted]

Supplement to Praecipe—Filed February 7, 1951

To the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division:

You will please include in the transcript of the Record in the above entitled cause to be transmitted to the Clerk of the Supreme Court the following:

61. Appeal Bond.

Said transcript is to be prepared as required by law and the Rules of this Court and Rules of the Supreme Court of the United States, and is to be filed in the Office of the Clerk of the Supreme Court.

Dated: February 5, 1951.

Weymouth Kirkland, Kirkland, Fleming, Green, Martin & Ellis, By Weymouth Kirkland, A Member of the Firm, Attorneys for plaintiffs, Office and P. O. Address: 33 No. La Salle Street, Chicago, Illinois.

Of Counsel: Cahill, Gordon, Zachry & Reindel, New York City, John T. Cahill, Joseph V. Jeffernan, John W. Nields.

[fol. 2461] Nash, Ahern and McNally, By N. Hulbert, A Member of the Firm, Attorneys for intervener-plaintiff, Emerson Radio & Phonograph Corporation, Office and P. O. Address: 111 West Washington Street, Chicago, Illinois.

Of Counsel: Paul, Weiss, Rifkind, Wharton & Garrison, New York City, Simon H. Rifkind.

Schapiro and Schiff, By B. C. Schiff, A Member of the Firm, Attorneys for intervener-plaintiff, Pilot Radio Corporation, Office and P. O. Address: 38 South Dearborn Street, Chicago 3, Illinois.

Of Counsel: Mnuchin & Smith, New York City, Leon Mnuchin, Jerome S. Zurkow.

Kelly, Kelly & Kelly, By John J. Kelly, Jr., A Member of the Firm, Attorneys for intervener-plaintiff, The Radio Craftsmen, Incorporated, Office and P. O. Address: 111 West Washington Street, Chicago, Illinois.

Righeimer and Righeimer, By Alvah T. Martin, A Member of the Firm, Attorneys for intervener-plaintiff, Wells-Gardner & Co., Office and P. O. Address: 135 South La Salle Street, Chicago, Illinois.

[fol. 2462] Carl Pomerance, Attorney for intervener-plaintiff, Sightmaster Corporation, Office and P. O. Address: 135 South La Salle St., Chicago, Illinois.

Jacobs and Kamin, By Alfred Kamin, A Member of the Firm, Attorneys for intervener-plaintiff, Local 1031, International Brotherhood of Electrical Workers, AFL, Office and P. O. Address: 201 North Wells Street, Room 1524, Chicago 6, Illinois.

Schradzke and Gould, By Gerald Ratner, Attorneys for intervener-plaintiff, Television Installation Service Association, Office and P. O. Address: 33 N. La Salle Street, Chicago 2, Illinois.

Service of the above "Supplement To Praecipe" accepted and acknowledged. The inclusion of the appeal bond in the transcript of the record is hereby agreed to.

Attorney General of the United States, By Anthony Scariand, United States Attorney for the Northern District of Illinois, By Otto Keimer, Jr., Federal Communications Commission, By Anthony Scariand, Arvey, Hodes and Mantynband, By George L. Siegel, Attorneys for intervener-defendant, Columbia Broadcasting System, Inc.

[fols. 2462a-2463] [File endorsement omitted]

[fol. 2464] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER—February 14, 1951

Pursuant to stipulation by and between the attorneys for the respective parties hereto, it is ordered that the following described documents which were filed with the Court and which, through clerical error have not been docketed in the office of the Clerk of the Court, may be docketed *nunc pro tunc* as of the filing date set forth in connection with the description of each of said documents, as follows:

Federal Communications Commissions' Response to Subpoena Duces Tecum and Motion to Quash, filed November 13, 1950.

Affidavit of Max Coleman in Opposition to Plaintiffs' Motion for Temporary Restraining Order, filed November 13, 1950.

Affidavit of George H. Brown, sworn to November 13, 1950, filed November 14, 1950.

Affidavit of Milton Chasin, sworn to November 13, 1950, filed November 14, 1950.

Affidavit of Frank Perloff sworn to November 13, 1950, filed November 14, 1950.

Affidavit of William Blank sworn to November 13, 1950, filed November 14, 1950.

Affidavit of Harry Lefkowitz sworn to November 13, 1950. filed November 14, 1950.

Philip L. Sullivan.

Enter:

—— ——, Judge.

[fol. 2465] UNITED STATES DISTRICT COURT

[Title omitted]

ORDER—February 14, 1951

On agreement of the parties by counsel now made in open court it is

Ordered that the Clerk of this Court be and he is hereby directed to correct a typographical error in the "Motion to Affirm", heretofore filed by the defendant, by striking the word "substantial" appearing in the last sentence of Footnote 2 and inserting in lieu thereof the word "insubstantial"

The Following are The Docket Entries to and Including February 14, 1951

50 C 1459

Three Judge Court
Judge J. Earl Major, Circuit Judge
Judge Philip L. Sullivan, District Judge
Judge Walter J. LaBuy, District Judge

Radio Corporation of America, National Broadcasting Co., Inc. and RCA Victor Distributing Corp.

Plaintiffs

(D)

vs.

United States of America and Federal Communications Commission.

Defendants.

Columbia Broadcasting System, Inc..

Party Defendant

Party Deft. given leave to intervene as per order of November 30, 1950.

SIGHTMASTER CORP., WELLS-GARDNER & CO., RADIO CRAFTSMEN INC., TELEVISION INSTALLATION SERVICE ASSOCIATION, PILOT RADIO CORPORATION, LOCAL 1031, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL, and EMERSON RADIO & PHONOGRAPH

Intervening Plaintiffs as per orders of November 14, 1950

ATTORNEYS FOR PLAINTIFF

Kirkland, Fleming, Green, Martin & Ellis
33 N. La Salle St.

Attorneys for Defendants

(For U.S.A. & Federal Communications Commission)
Otto Kerner, Jr.
U. S. Attorney

(For Columbia Broadcasting Inc)
Arvey, Hodes & Mantynband
1 N. La Salle St.

(For Pilot Radio Corp. as Applicant for intervention)
Schaniss & Schiff
38 S. Dearborn St. (3)

ATTORNEYS FOR INTERVENING PLAINTIFFS.

(For SightMaster Corp.)
Carl Pomerance
135 S. La Salle St. (3)

(For Wells-Gardner & Co.)
Righheimer & Righheimer
135 S. La Salle St. (3)

(For Radio Craftsmen Corp.)
Kelly, Kelly & Kelly
111 W. Washington St. (2)

(For Television Installation)
Schradzke & Gould
33 N. La Salle St. (2)

(For Pilot Radio Corp.)
Schaniss & Schiff
First National Bk. Bldg. (3)

OVER

ADDITIONAL ATTORNEYS FOR
INTERVENING PLAINTIFFS

(For Local 1031, International
Brotherhood of Elec. Workers)
Jacobs & Kamin
201 N. Wells St. (6)

(For Emerson Radio Corp.)
Nash, Ahern & McNally
111 W. Washington St. (2)

D. C. Form No. 105A

JUDGE SULLIVAN

907

DOCKET CALENDAR

NO.	TITLE OF CASE	ATTORNEYS
	RADIO CORPORATION OF AMERICA NATIONAL BROADCASTING COMPANY, INC. and RCA VICTOR DISTRIBUTING CORPORATION Plaintiffs, against UNITED STATES OF AMERICA and FEDERAL COMMUNICATIONS COMMISSION, Defendants.	SEE PRECEDING PAGE FOR ATTORNEYS *For Plaintiff:* Kirkland, Fleming, Green, Martin & Ellis 33 North LaSalle St. RA 6-2929. *For Defendant:*

Nature of action: Suit to enjoin, set aside, annul and suspend a certain order of the Federal Communications Commission.

Jury trial demanded by

, 19

DATE	PLAINTIFF'S ACCOUNT	RECEIVED	DISBURSED	DATE	DEFENDANT'S ACCOUNT	RECEIVED	DISBURSED
10-7-58	K. F. L. & M. & E. Dep.	15 00					
JAN 13 1959	FEC. REPORT		15 00				
1-29-59	K. F. L. & M. & E. Appeal	5 00					

ABSTRACT OF COSTS		RECEIPTS, REMARKS, ETC.
TO WHOM PAID	AMOUNT	

2468

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
10-17-50	Filed complaint and ( ) copies (24) Exhs) (JS-5)	15 00		
10-17-50	Issued summons and (4) copies with ( ) copies of complaint.			
10-24-50	Fld. Motion of Pltfs. for Temporary injn. and other relief. (2)L			
" " "	Filed Notice of Motion for temp injn.,etc. (3)r			
" " "	Filed Certificate of Mailing by the Clerk. (1) r			
11-1-50	Fld. summons ret'd. served. 1 serv. $2.00 L			
10-30-50	Filed Notice, Motion to Intervene, Affidavit of Adrian Murphy and Stipulation. (10)			
" " "	Leave to Columbia Broadcasting System Inc. to intervene as party deft-DRAFT- (2)			
	Deft. Columbia Broadcasting System Inc. to file motion to dismiss and for summary judgment Nov. 14, 1950-Sullivan, J.			
" " "	Enter Order in reference to Exhibits, etc.-DRAFT-Sullivan, J. (2)			
" " "	Filed Notice of Motion. (1)			
" " "	Filed Affidavit of Robert D. Greenburg. (1)			
" " "	Filed Notice and Motion to Dismiss. (6)			
" " "	Filed Motion to Dismiss and in the Alternative for Summary Judgment and Affidavit of Benedict P. Cottone & 4 copies. (11)			
" " "	Motion for temporary or interlocutory injunction set for hrg. Feb. 14, 1951 at 10:30 a.m. before Judge Major, Luhby and Sullivan-Sullivan, J.			
" " "	Motion of Pilot Radio Corp. for permission to intervene as party plaintiff entered and cont'd. to Nov. 14, 1950-Sullivan, J.			
" " "	Order pltf. to file supporting affidavits ref motion for temporary injunction by Nov. 9, 1950; Deft. to file counter affidavits by Nov. 11, 1950-Sullivan, J.			
	Fld. notice to attys. 11-6-50. P			
	Filed Notice of U.S.C.A. signed by Hon. J. Earl Major designating three Judge Court.			
	Filed appearance of Pilot Radio Corp. as Applicant for Intervention. P			
	Filed affidavits of Plaintiffs, G. B. Jolliffe, Walter A. [illegible] and Walter H. Horton & 2 copies.			
	Filed affidavits of Plaintiffs-Supplementary Affidavit of Walter H. Horton.			
	Filed Notices. (2)			
	Filed Petition and 2 copies. (3)			
	Motion of Electrometer Corp. for leave to intervene entered and cont'd. to Nov. 14, 1950-Sullivan, J.			
	Fld. notice to attys. 11-10-50. P			
	Filed Notice and Affidavit of Dave Judge. (3)			
	Filed Motion to Intervene as Plaintiff. (3)			
	Motion of [illegible] Co. for leave to intervene entered and cont'd. to Nov. 14, 1950-Sullivan, J.			
	Fld. notice to attys. 11-10-50.			
	Filed Notice. (2)			
	Filed Motion to Intervene and copy of Intervening complt. (15)			
	Filed Notice for Temp. Injn. (1)			
	Motion of Television Installation Service Association to intervene as a plaintiff and motion to join in motion of original Pltfs. for temporary injunction entered and cont'd. to Nov. 14, 1950-Sullivan, J.			
	Fld. notice to attys. 11-10-50. P			

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
11-10-50	Filed Notice. (3)			
" " "	Filed Motion to Intervene, & 2 copies (3)			
" " "	Motion of the Radio Craftsmen, Inc. for leave to intervene entered and cont'd. to Nov. 14, 1950-Sullivan, J. Mld. notice to attys. 11-10-50. P			
11-10-50	Filed Affidavit of Simon H. Rifkind and Motion to Intervene. (8)			
" " "	Motion of Emerson Radio & Phonograph Corp. for leave to intervene entered and cont'd. to Nov. 14, 1950-DR FT-Sullivan, J. (2) Mld. notice to attys. 11-10-50. P			
11-13-50	Filed Affidavit of Intervenor Columbia Broadcasting System Inc. and Exhibits.			
" " "	Filed Affidavits of Richard L. Hirsch and Herold W. Levin. (13)			
" " "	Filed Affidavit of J. O. Reineke. (7)			
" " "	Filed Acknowledgment of Service and Proof of service. (2)			
" " "	Filed Affidavit of Service of Affidavits of Hirsch, Levin and Reinecke. (1)			
11-14-50	Filed Intervening Complaint of Wells Gardner & Co. (11)			
" " "	Leave to Wells Gardner Co. to intervene as pltf.-Js. Major, LaBuy and Sullivan Mld. notice to attys. 11-16-50. P			
11-14-50	Filed Notice. (3)			
" " "	Filed Motion to Intervene and Pleading of Intervention. (1) (8)			
" " "	Leave to Emerson Radio & Phonograph Corp. to intervene as party plaintiff-Js. Major, LaBuy and Sulli an Mld. notice to attys. 11-16-50.			
11-14-50	Filed Notice. (2)			
" " "	Filed Motion of Local 1031, etc. to intervene, and Complaint of Intervenor. (12)			
" " "	Leave to Local 1031 International Brotherhood of Electrical Workers to intervene as pltfs.-Js. Major, LaBuy & Sullivan Mld. notice to attys. 11-16-50. P			
11-14-50	Filed Notice. (2)			
" " "	Filed Motion to Intervene as Plaintiff. (3)			
" " "	Filed Intervenor's Complt. of Pilot Radio Corp. (10)			
" " "	Filed Exhibits A, B, C, D and E to Complt. of Pilot Corp.			
" " "	Leave to Pilot Radio Corp. to intervene-Js. Major, LaBuy and Sullivan. Mld. notice to attys. 11-16-50. P			
11-14-50	Filed Intervening complt. of Television Installation Service. (13)			
" " "	Leave to Television Installation Service Assn. to intervene as pltf.-Js. Major, Sullivan and LaBuy. Mld. notice to attys. 11-16-50. P			
11-14-50	Filed Intervening Complt. of Radio Craftsmen Inc. (10)			
" " "	Leave to the Radio Craftsmen Inc. to intervene as pltfs.-Js. Major, LaBuy and Sullivan Mld. notice to attys. 11-16-50. P			
11-14-50	Filed Intervening Complaint of Sightmaster Corp. (8)			
" " "	Leave to Sightmaster Corp. to intervene as pltf.-Js. Major, Sullivan and LaBuy Mld. notice to attys. 11-16-50. P			
11-14-50	Filed List of Printer's Errors in Exhibits annexed to complt. and in affidavits of pltf's. (4)			
11-14-50	Filed Proposed Complt. of Pilot Radio Corp. (11)			

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES: PLAINTIFF	CLERK'S FEES: DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
11-14-50	Filed Materials referred to in "Response to Subpoena Duces Tecum and motion to quash Pilot Subpoena.			
11-15-50	Filed Exhibits of CBS. P			
11-16-50	Leave to Columbia Broadcasting System to file brief with respect to motion for temporary injunction and motion to dismiss or for summary judgment within five days from Nov. 15, 1950 and leave to pltfs. and pltf-intervenors to file replies to such brief within five days thereafter-Sullivan, J.			
	Mld. notice to attys. 11-16-50. P			
11-16-50	Arguments hrd. and motion for interlocutory injunction taken under advisement. Leave to any interested party to submit briefs in 5 days and reply briefs 5 days thereafter-Js. Major, LaBuy and Sullivan.			
" " "	Arguments hrd. and motion to dismiss and for summary judgment taken under advisement. Leave to any interested party to submit briefs in 5 days and reply briefs 5 days thereafter-Js. Major, LaBuy and Sullivan			
" " "	Enter Temporary Restraining Order and Findings of Fact and Conclusions of Law -DRAFT-Js. Major, LaBuy and Sullivan (6)			
	Mld. notice to attys. 11-16-50. P			
11-20-50	Filed Receipt for Exhibits of Pilot Radio Corp. (1)			
11-20-50	Filed Affidavit of Isidor Goldberg (Exhibits attached) (6)			
" " "	Filed Subpoena Duces Tecum ret'd. served as to Federal Communications Commission.			
" " "	Filed Subpoena Duces Tecum ret'd. served as to Columbia Broadcasting Co.			
" " "	Filed Affidavit of Service of Exhibits to proposed Complt. of Intervension of Pilot Radio Corp. (1)			
11-22-50	Filed Affidavit of Margaret Burke. (2)			
11-29-50	Filed Acknowledgment of Service of Brief. (2)P			
12-8-50	Filed Acknowledgment of Service of Affidavits. (3)P			
12-22-50	Filed Opinion of the Court. (17)			
" " "	Temporary Restraining Order entered Nov. 16, 1950 cont'd in full force and effect until April 1, 1951 or until terminated by Supreme Court of U. S. and order summary judgment entered in favor of defts. and complt. dismissed-DRAFT-Js. Sullivan and LaBuy (JS6) (1)			
	Mld. notice to attys. 12-22-50. P			15 00
12-26-50	Clerk's File Copy of Transcript of Proceedings of Oct. 30, 1950, filed by Official Reporter. (11)r			
1-5-51	Clerk's File Copy of Transcript of Proceedings of Nov. 14, 15, & 16, 1950, filed by Official Reporter. (379)r			
12-22-50	Issued C. C. of Opinion to P. C. C.	1	25 US	
1-19-51	Ordered that sum. Judgt. be and it is hereby entered in favor of the Defts. and against the plaintiff's including the Plf.'s intervenors & that complt. including those of the plf. intervenors are dismissed nunc pro tunc as of Dec. 22, 1950 - Js. Major, and Sullivan;			
	Mld. notc. to attys., 1-24-51.			

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTER'S EMOLUMENTS RETAINED
1-23-51	Ordered that the order entered herein on January 19, 1951 be vacated and ordered with the consent of the parties to this cause that the last paragraph of the order entered herein on Dec. 22, 1950 be and it is hereby amended for the purpose of clarification, nunc pro tunc as of that date, to read as follows: "It is further ordered that a summary judgment be and it is hereby entered in favor of the defendants and against the plaintiffs, including the pltf-intervenors, and that the complaints including those of the pltf-intervenors, are dismissed."-Major, C. J. and Sullivan, D. J.			
	Mld. notice to attys. 1-26-51. P			
1-25-51	Filed Petition for Appeal by the Plaintiffs and Plaintiff-Intervenors. (4)	5 00 pd		
" " "	Filed Notice and Motion of plaintiffs for Transmittal of Original Documents. (4) (4)			
" " "	Order allowing Appeal; bond of $250.00; and Citation issue-DRAFT-(2) Plaintiffs Appeal bond in the sum of $250.00 approved and leave to Transmit original documents-DRAFT-Major, D. J. and Sullivan, D. J. (1)			
	Mld. notice to attys. 1-26-51. P			
1-25-51	Filed Appeal Bond in the sum of $250.00. (3)			
" " "	Filed Assignment of Errors & Prayer for Reversal. (9)			
" " "	Filed Statement required by Paragraph 2 Rule 12 of the Rules of the Supreme Court of United States. (4)			
" " "	Filed Praecipe. (9) P			
1-25-51	Filed Statement as to Jurisdiction. (27)			
1-25-51	Filed Citation on Appeal. (2)			
1-29-51	Filed Admission of Service of Papers on Appeal. (1)P			
2-5-51	Filed Motion to Affirm. (22)			
" " "	Filed Proof of Service of Motion to Affirm. (1) P			
2-7-51	Filed Supplement to Praecipe " (3) P			
" "	By agreement of counsel ordered that the Clerk of this U.S.District Court be and is hereby authorized and directed to correct a typographical error in the Statment as to Jurisdiction, heretofore filed herein by plaintiffs, by striking out the word "Committee" in the last line on page 16 thereof and inserting instead the word "Commission". Sullivan, J.			
	Mailed Notice to attys. 2-8-51 P			

(Entries Continued on Following Page)

50 C 1459

2-14-51	Filed Motion to Correct "Motion to Affirm".	(2)
" " "	By agreement of counsel, order that the Clerk of this Court is hereby directed to correct a typographical error in the "Motion to Affirm" heretofore filed by the defendants, by striking the word "substantial" in the last sentence of Footnote 2 and inserting in lieu thereof the word "insubstantial"- Sullivan, J.	
	Mld. notice to attys. 2-14-51.	
2-14-51	Filed Stip.	(4)
" " "	Leave to docket documents described in Draft Order submitted- DRAFT-Sullivan, J.	(1)
	Mld. notice to attys. 2-14-51.	
2-14-51	Filed Response to Subpoena Duces Tecum and Motion to Quash, nunc pro tunc Nov. 13, 1950.	(4)
" " "	Filed Affidavit of Max Goldman, nunc pro tunc Nov. 13, 1950.	(9)
" " "	Filed Affidavit of George H. Brown, nunc pro tunc Nov. 13, 1950.	(2)
" " "	Filed Affidavit of Milton Chasin, Harry Lefkowitz, William Blank and Frank Perloff, nunc pro tunc Nov. 13, 1950.	(8)P
2-14-51	Filed Exhibit "A" consisting of 27 Volumes of Transcripts Exhibits, Pleadings and other documents.	

2473-2474

[fol. 2475] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 2476] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

No. 565

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON—Filed February 27, 1951

Appellants adopt for their statement of points upon which they intend to rely in their appeal to this Court the points contained in their Assignment of Errors heretofore filed.

Respectfully submitted, John T. Cahill, Counsel for Plaintiff-Appellants, Office and P. O. Address: 63 Wall Street, New York 5, New York.

Of Counsel: Weymouth Kirkland, Howard Ellis, Joseph V. Heffernan, John W. Nields.

[fol. 2477] Simon H. Rifkind, Counsel for Intervener-Appellant, Emerson Radio & Phonograph Corporation, Office and P. O. Address: 61 Broadway, New York, New York.

Of Counsel: Paul, Weiss, Rifkind, Wharton & Garrison, New York City.

B. C. Schiff, Counsel for Intervener-Appellant, Pilot Radio Corporation, Office and P. O. Address: 38 South Dearborn Street, Chicago, Illinois.

Of Counsel: Mnuchin & Smith, New York City, Schapiro and Schiff, Chicago, Illinois, Leon Mnuchin, Jerome S. Zurkow.

John J. Kelly, Jr., Counsel for Intervener-Appellant, The Radio Craftsmen, Incorporated, Office and P. O. Address: 111 West Washington Street, Chicago, Illinois.

Frank S. Righeimer, Jr., Counsel for Intervener-Appellant, Wells-Gardner & Co., Office and P. O.